

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
:
JEFFREY S. VAUGHN, individually and on :
behalf of those Class Members similarly situated, :

Plaintiff, :

-against- :

LEEDS, MORELLI & BROWN, P.C., LEEDS, :
MORELLI & BROWN, L.L.P., LEEDS & :
MORELLI, LEEDS, MORELLI & BROWN, :
PRUDENTIAL SECURITIES, INC., :
PRUDENTIAL FINANCIAL, INC., :
WACHOVIA CORPORATION, WACHOVIA :
SECURITIES, LLC, LENARD LEEDS, STEVEN :
A. MORELLI, JEFFREY K. BROWN, JAMES :
VAGNINI, FREDERIC DAVID OSTROVE, :
ROBERT JOHN VALLI, JR., :
DISCRIMINATION ON WALL STREET, INC. :
DISCRIMINATION ON WALL STREET, :
MANHATTAN, INC., JOHN DOES, 1-10 AND :
JANE DOES, 1-10 a fictitious designation for :
presently unknown licensed attorneys, :
professionals and/or unknown persons or entities,, :

Defendants. :

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Case No. 04 Civ. 8391 (DLC)

AFFIRMATION OF
BLAINE H. BORTNICK

Blaine H. Bortnick, an attorney duly admitted to practice in the courts of the
State of New York and the Southern District of New York, states under penalty of perjury:

1. I am a partner of Liddle & Robinson, L.L.P., attorneys for Plaintiff Jeffrey
S. Vaughn. This Affirmation is respectfully submitted in support of Plaintiff's Motion to
Lift the Stay and to Vacate an arbitration award rendered by a panel of the National

Association of Securities Dealers, Inc. ("NASD") in the arbitration proceeding entitled, *Jeffrey S. Vaughn v. Leeds, Morelli & Brown, P.C., Leeds, Morelli & Brown, L.L.P., Prudential Securities, Inc., et al.*, NASD Dispute Resolution Arbitration Number 06-00534.

2. Attached hereto as Exhibit A is a true and correct copy of the Award, dated May 10, 2007, and delivered to Petitioner on May 11, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of a transcript of the arbitration hearing held on April 23, 2007.

4. Attached hereto are true and correct copies of all exhibits admitted into evidence by the parties at the arbitration hearing held on April 23, 2007.

a. Attached as Exhibit C is a true and correct copy of Claimant's Exhibit 1, the Opinion and Order of this Court, dated August 12, 2005.

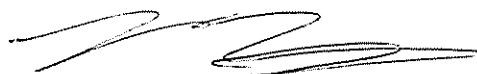
b. Attached as Exhibit D is a true and correct copy of Claimant's Exhibit 2, the September 5, 2006 Transcript of Proceedings in *Vaughn v. Leeds, Morelli & Brown, P.C., et al.*, S.D.N.Y. Case No. 04 Civ. 08391 (DLC).

c. Attached as Exhibit E is a true and correct copy of Claimant's Exhibit 3, the Settlement Agreement and General Release entered into on October 27, 1998.

d. Attached as Exhibit F is a true and correct copy of Respondents' Exhibit 1, Mr. Vaughn's retainer agreement with Leeds & Morelli, Esqs., dated January 5, 1998.

- e. Attached as Exhibit G is a true and correct copy of Respondents' Exhibit 2, a letter from Jeffrey S. Vaughn to Jeffrey K. Brown.

Dated: New York, New York
August 2, 2006

A handwritten signature in black ink, appearing to read "Blaine H. Bortnick", written over a horizontal line.

BLAINE H. BORTNICK

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Jeffrey S. Vaughn (Claimant) vs. Leeds, Morelli & Brown, P.C., Leeds Morelli & Brown, L.L.P., Prudential Securities, Inc., Leeds & Morelli, Leeds Morelli & Brown, Lenard Leeds, Steven A. Morelli, Jeffrey K. Brown, Prudential Financial, Inc., James Vagnini, Frederic Ostrove, John Robert Valli, Jr., Discrimination on Wall Street, Inc., and Discrimination on Wall St. Manhattan, Inc. (Respondents)

Case Number: 06-00534

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member, and Non-Members.

REPRESENTATION OF PARTIES

Claimant Jeffrey S. Vaughn hereinafter referred to as "Claimant": Blaine H. Bortnick Esq., and Jeffrey S. Liddle, Esq., Liddle & Robinson, L.L.P, New York, NY.

Respondents Leeds, Morelli & Brown, P.C. ("Leeds P.C."), Leeds Morelli & Brown, L.L.P ("Leeds L.L.P"), Leeds & Morelli ("Leeds & Morelli"), Leeds Morelli & Brown ("Leeds Morelli & Brown"), Lenard Leeds ("L. Leeds"), Steven A. Morelli ("S. Morelli"), Jeffrey K. Brown ("Brown"), James Vagnini ("Vagnini"), Frederic David Ostrove ("Ostrove"), and John Robert Valli, Jr. ("Valli"), hereinafter referred to as "Leeds Respondents": Shari Clare Lewis, Esq., Rivkin Radler LLP, Uniondale, NY.

Respondent Prudential Equity Group, LLC ("PEG"), and Prudential Financial, Inc. ("PFI") hereinafter referred to as "Prudential Respondents": Gerard E. Harper, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY.

Respondent Discrimination on Wall Street, Inc. ("Discrimination Inc.") did not enter an appearance in this matter.

Respondent Discrimination on Wall St. Manhattan, Inc. ("Discrimination Manhattan") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: February 2, 2006.

Claimant signed the Uniform Submission Agreement: February 2, 2006.

Joint Statement of Answer filed by Leeds Respondents on or about: September 15, 2006.

Leeds P.C. signed the Uniform Submission Agreement: September 15, 2006.

Leeds L.L.P signed the Uniform Submission Agreement: September 15, 2006.

Leeds & Morelli signed the Uniform Submission Agreement: September 15, 2006.

Leeds Morelli & Brown signed the Uniform Submission Agreement: September 15, 2006.

L. Leeds signed the Uniform Submission Agreement: September 15, 2006.

NASD Dispute Resolution
Arbitration No. 06-00534
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S. Morelli signed the Uniform Submission Agreement: September 15, 2006.
Brown signed the Uniform Submission Agreement: September 15, 2006.
Vagnini signed the Uniform Submission Agreement: September 15, 2006.
Ostrove signed the Uniform Submission Agreement: September 15, 2006.
Valli signed the Uniform Submission Agreement: September 15, 2006.

Joint Statement of Answer submitted by PEG and PFI on or about: September 15, 2006.

PEG signed the Uniform Submission Agreement: September 15, 2006.
PFI did not sign the Uniform Submission Agreement.

Discrimination Inc. did not file an Answer or sign the Uniform Submission Agreement.

Discrimination Manhattan did not file an Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following cause of action: violations of NASD rules.

Unless specifically admitted in their Answer, Leeds Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Prudential Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested that the Panel issue an order declaring that Claimant may pursue his class action claims against Respondents in court, reimbursement of his filing fees, costs, and attorneys' fees, and that disciplinary action be brought against the Prudential Respondents.

Leeds Respondents requested dismissal of the Statement of Claim in its entirety.

Prudential Respondents requested dismissal of the Statement of Claim in its entirety, attorneys' fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Discrimination on Wall Street, Inc., and Discrimination on Wall Street, Manhattan, Inc., did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the terms of a Settlement Agreement dated October 27, 1988 and, are bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by the Claimant, the undersigned arbitrators (the "Panel") determined that Respondents Discrimination on Wall Street, Inc., and Discrimination on Wall Street, Manhattan, Inc., have been properly served with

NASD Dispute Resolution
 Arbitration No. 06-00534
Award Page 3 of 5

the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety; the Settlement Agreement, dated October 27, 1998 precludes Claimant from bringing a Class Action in court.
2. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	Waived
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Prudential Equity Group, LLC is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on either a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$2,000.00
Pre-hearing conferences: December 7, 2006 1 session	
March 20, 2007 1 session	
One (1) Hearing session @ \$1,000.00	= \$1,000.00
Hearing Date: April 23, 2007 1 sessions	
Total Forum Fees	= \$3,000.00

NASD Dispute Resolution
 Arbitration No. 06-00534
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1. The Panel has assessed \$3,000.00 of the forum fees jointly and severally to PEG and Leeds P.C.

Fee Summary

1. PEG is solely liable for:

Member Fees	= \$4,450.00
Total Fees	= \$4,450.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. PEG and Leeds P.C. are jointly and severally liable for:

Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,000.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

NASD REGULATION

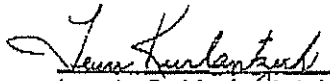
NASD Dispute Resolution
Arbitration No. 06-00534
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ARBITRATION PANEL

Lewis S. Kurlantzick	-	Public Arbitrator, Presiding Chairperson
Nathan M. Lubow	-	Public Arbitrator
Doris Lindbergh, Esq.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this Instrument which is my award.

Concurring Arbitrators' Signatures



Lewis S. Kurlantzick
Public Arbitrator, Presiding Chairperson

5/1/07

Signature Date

Nathan M. Lubow
Public Arbitrator

Signature Date

Doris Lindbergh, Esq.
Non-Public Arbitrator

Signature Date

May 10, 2007

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 5 of 5

ARBITRATION PANEL

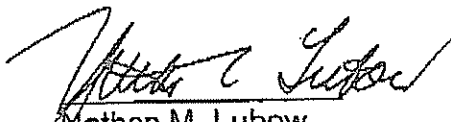
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Lewis S. Kurlantzick
Public Arbitrator, Presiding Chairperson

Signature Date


Nathan M. Lubow
Public Arbitrator

5/7/07
Signature Date

Doris Lindbergh, Esq.
Non-Public Arbitrator

Signature Date

May 10, 2007
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 5 of 5

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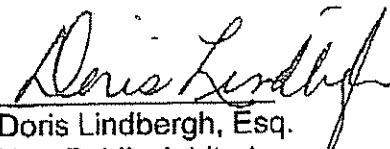
Concurring Arbitrators' Signatures

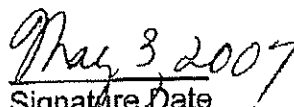
Lewis S. Kurlantzick
Public Arbitrator, Presiding Chairperson

Signature Date

Nathan M. Lubow
Public Arbitrator

Signature Date


Doris Lindbergh, Esq.
Non-Public Arbitrator


Signature Date

May 10, 2007
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PROCEEDINGS

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the

Arbitration between

JEFFREY S. VAUGHN,

Claimant,

-and-

LEEDS, MORELLI & BROWN, P.C.,

LEEDS, MORELLI & BROWN, LLP,

PRUDENTIAL SECURITIES INC.,

et al.,

Respondents.

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One Liberty Plaza

New York, New York

Monday, April 23, 2007

B E F O R E:

LEWIS KURLANTZICK, Chairman

NATHAN LUBOW, ARBITRATOR

DORIS LINDBERGH, ARBITRATOR

Reported by:

William Byrne

1		1	
2	APPEARANCES:	2	PROCEEDINGS
3	For the Claimant:	3	THE CHAIRMAN: This is the
4	LIDDLE & ROBINSON, ESQS.	4	hearing of April 23, 2007 NASD case
5	800 Third Avenue	5	0600534 Jeffrey S. Vaughn versus
6	New York, New York 10022	6	Leeds Morelli & Brown et al. We are
7	BY: BLAINE H. BORTNICK, ESQ.	7	going to start with the introduction
8	REBECCA A. SAENGER, ESQ.	8	of the arbitration panel. I am the
9		9	chairman, Lewis Kurlantzick.
10	For the Respondent:	10	ARBITRATOR LUBOW: Nathan
11	PAUL. WEISS, RIFKIND, WHARTON & GARRISON, ESQS.	11	Lubow, the arbitrator.
12	1285 Avenue of the Americas	12	ARBITRATOR LINDBERGH: Doris
13	New York, New York 10018	13	Lindbergh, the arbitrator.
14	BY: GERARD E. HARPER, ESQ.	14	THE CHAIRMAN: I have no
15	LIZA M. VELAZQUEZ, ESQ.	15	additional disclosures to make at
16	SAMUEL M. SHELDON, ESQ.	16	this point.
17		17	ARBITRATOR LINDBERGH: I have
18	For the Respondent:	18	no disclosures.
19	Leeds Morelli & Brown	19	ARBITRATOR LUBOW: I have no
20	RIVKIN RADLER, ESQ.	20	disclosures to make.
21	EAB Plaza Uniondale	21	THE CHAIRMAN: We will go
22	New York 11556	22	around the room and if everybody
23	BY: SHARI CLAIRE LEWIS, ESQ.	23	would indicate your name and your
24		24	relationship to the parties, please.
25		25	MR. VAUGHN: Jeffrey Vaughn,
[Page 2]		[Page 4]	
1	ALSO PRESENT:	1	
2	KENNETH THYNE, ESQ.	2	the claimant in this arbitration.
3	JULIA HENICK RIGBY, ESQ.	3	MR. BORTNICK: Blaine
4		4	Bortnick, I am with the law firm of
5		5	Liddle & Robinson. With me today
6		6	is my colleague Robin Saenger. I
7		7	represent the claimant in this
8		8	action.
9		9	Present in the room today, is
10		10	Mr. Kenneth Thyne, who is also
11		11	counsel for Mr. Vaughn. Also Mr.
12		12	Vaughn's wife is sitting there in
13		13	the back, she is not a participant.
14		14	MS. LEWIS: My name is Shari
15		15	Lewis, and I am from the law firm of
16		16	Rivkin Radler. I represent the
17		17	respondent Leeds Morelli & Brown in
18		18	this action.
19		19	MR. HARPER: My name is
20		20	Gerard Harper. I am from the law
21		21	firm of from Paul Weiss Rifkind
22		22	Wharton & Garrison. I represent
23		23	Prudential Securities, the
24		24	respondent. And with me are my
25		25	colleagues Liza Velazquez and Samuel
[Page 3]		[Page 5]	

[2] (Pages 2 to 5)

1		1	
2	Sheldon as well as a representative	2	administer or enforce. If any
3	of my client Julia Rigby who is the	3	matter comes to the attention of the
4	assistant general counsel, and I	4	panel during this panel's
5	have a paralegal here as well.	5	participation in this proceeding
6	THE CHAIRMAN: Do you have	6	that this panel has reason to
7	any objection to Ms. Vaughn being	7	believe may constitute a violation
8	present during the proceeding?	8	of the association rules or the
9	MR. HARPER: I don't.	9	federal securities laws, the panel
10	THE CHAIRMAN: We need to at	10	may initiate a referral of the
11	this point to obtain conformation	11	matter to the association for
12	from the parties or the	12	disciplinary investigation.
13	representatives of the their	13	If we make any such referral
14	acceptance of the panel's	14	it will only be initiated after this
15	composition.	15	dispute has been either settled or
16	MR. BORTNICK: Yes, we accept	16	otherwise disposed of or after a
17	for the claimant.	17	final award has been rendered.
18	MS. LEWIS: Yes, we accept.	18	We have been selected to serve
19	MR. HARPER: Prudential	19	as neutral arbitrators to decide the
20	Securities accepts for the	20	matter, we are not NASD dispute
21	respondent.	21	resolution employees. Pursuant to
22	THE CHAIRMAN: We have	22	Canon 1 of the ABA, AAA Code of
23	submitted our properly executed	23	Ethics we as neutral arbitrators
24	oaths of arbitrators to the NASD	24	have the duty of conducting this
25	dispute resolution staff. This	25	proceeding with fairness and
	[Page 6]		[Page 8]
1		1	
2	controversy has been submitted to	2	integrity. That duty extends to all
3	the panel for hearing in accordance	3	parties and to this process,
4	with the Code of Arbitration	4	therefore, on behalf of the panel I
5	Procedure.	5	respectfully request that all
6	The panel is authorized to	6	parties and their counsel or
7	determine each of the matters set	7	representatives refrain from
8	forth in the parties' statements and	8	engaging in any conversations or
9	filed with the NASD dispute	9	contact with the panel members
10	resolution unless the law directs	10	except within this room and in the
11	otherwise. All the awards rendered	11	presence of all parties' counsel or
12	pursuant to the code will be final	12	representatives.
13	and will not be subject to an	13	We thank you for your
14	appeal.	14	anticipated cooperation in that
15	We would appreciate it if no	15	respect.
16	interruptions are made during an	16	I need to now administer the
17	individual's testimony. Parties are	17	oath to those who are or are likely
18	entitled to make objections, cross	18	to be witnesses. I don't know who
19	examine and redirect witnesses, and	19	they are. I assume Mr. Vaughn, and
20	the arbitrators may ask questions as	20	I don't know whether that includes
21	they deem appropriate.	21	Mr. Morelli but if it does please
22	The submission of the matter	22	raise your right hand.
23	to arbitration will not preclude any	23	(The chairman swore in the
24	right of the NASD that it otherwise	24	proposed witnesses: Mr. Vaughn and
25	would be authorized to adopt,	25	Mr. Morelli.)
	[Page 7]		[Page 9]

[3] (Pages 6 to 9)

1		1	
2	THE CHAIRMAN: The arbitrators	2	been killed in support of that
3	have read the pleadings that have	3	effort, but it all boils down to one
4	been submitted by the parties.	4	thing what was the intention of the
5	These papers along with executed	5	parties to the settlement agreement,
6	submission agreements will be marked	6	when Mr. Vaughn signed a September
7	and received into evidence as	7	agreement back in October of 1998
8	Arbitrator's Exhibit 1. We intend	8	where he settled his matter with
9	to take a break midmorning,	9	Prudential Securities. That's all.
10	midafternoon and for lunch.	10	The agreement contains an
11	However, if any of the participants	11	arbitration clause, and the
12	have need to take a break at any	12	arbitration clause says any dispute
13	other time or for any other reason	13	arising out of the agreement shall
14	please let us know, and we will be	14	be arbitrated pursuant to the rules
15	happy to cooperate with you.	15	of the New York Stock Exchange or
16	Each party may make an opening	16	the NASD. Both forms have the exact
17	statement. It should be limited to	17	same rule. For purposes of the NASD
18	what the parties intend to prove and	18	we are talking about the rule that
19	should not be a presentation of the	19	prohibits class actions from being
20	evidence or of the merits of the	20	arbitrated and, in fact, furthermore
21	case with respect to documentary	21	as pointed out in the statement of
22	evidence. That evidence will be	22	claim that industry parties such as
23	marked for identification shown to	23	Prudential are in fact prohibited
24	the opposing parties for review and	24	from enforcing agreements to compel
25	possible objection to its	25	arbitration at the NASD of class
	[Page 10]		[Page 12]
1	admissibility.	1	
2	The panel will rule on any	2	action claims. That's why we have,
3	objections asserted and determine	3	for example, class actions that are
4	whether the document will be	4	dealing with securities, fraud and
5	received in evidence. The parties	5	so forth.
6	and attorneys are responsible for	6	Typically, as I'm sure this
7	providing copies of all proposed	7	panel well knows if somebody has a
8	exhibits to the other parties and to	8	typical customer case they have to
9	the panel. Parties are encouraged	9	arbitrate it, but class actions are
10	to avoid repetitive arguments and	10	heard in court. There are the
11	parties and counsel please direct	11	arbitration agreements when a
12	all objections to the panel and not	12	customer signs up with a company
13	to each other.	13	like Prudential or Merrill Lynch or
14	We are now ready for the	14	anywhere else.
15	parties' opening statements	15	The same thing here. We have
16	beginning with the claimant.	16	an arbitration clause it doesn't
17	MR. BORTNICK: Good morning.	17	include class actions, nevertheless,
18	We are here for what I hope is going	18	the federal court has sent to
19	to be a very short hearing because	19	arbitration the question of the
20	we are here to decide just one issue	20	meaning of the arbitration clause.
21	as directed by the federal court. I	21	Now the court suggested there
22	know that the panel has seen	22	are three possible interpretations.
23	briefing upon briefing upon	23	One of which I think everybody
24	briefing, and lots of trees have	24	probably agrees in the room, at
25		25	least from the parties' side it
	[Page 11]		[Page 13]

[4] (Pages 10 to 13)

1		1	
2	doesn't apply, which would be that	2	Chairman. Good morning, and thank
3	you could have a class arbitration.	3	you for agreeing to serve.
4	I'm certain that Mr. Friedman	4	I feel something like deja vu
5	would never allow a class	5	all over again because we have made
6	arbitration to go forward with the	6	this argument and heard Mr. Bortnick
7	NASD. The NASD is simply not	7	make this argument over and over
8	equipped to handle a class action.	8	again.
9	So the question is whether Mr.	9	Let me give you a timeline
10	Vaughn intended to waive his rights	10	here, just briefly. Mr. Vaughn
11	to bring a class action when he	11	entered into a retainer agreement
12	signed the settlement agreement.	12	with what was then Leeds Morelli in
13	You will hear Mr. Vaughn	13	January of 1998 and he agreed in
14	testify today, the answer is clearly	14	that retainer agreement to pay a
15	no. And that will basically be all	15	legal fee and Leeds Morelli agreed
16	the evidence you are going to hear.	16	to attempt to negotiate a
17	Mr. Vaughn's testimony is going to	17	settlement.
18	be short, and I'm interested to see	18	Mr. Vaughn went through a
19	what the defense will be, but we	19	process that we will hear about, and
20	will find out. And that's it.	20	he asked for \$200,000 from
21	In conclusion of the hearing,	21	Prudential Securities and an
22	which I don't even think should go	22	extension of his Cobra rights. And
23	beyond the morning, I think it will	23	he got \$200,000 and an extension of
24	be clear that Mr. Vaughn did not	24	his Cobra rights. And so he got
25	intend to waive class action, his	25	every nickel he asked for in the
	[Page 14]		[Page 16]
1		1	
2	rights to bring a class action, and	2	mediation.
3	as such his class action against	3	Almost six years to the day of
4	Prudential and by extension Leeds	4	when he executed that settlement
5	Morelli & Brown should go back to	5	there arrives a class action with
6	court.	6	Mr. Vaughn's name on the north side
7	Leeds Morelli & Brown is here	7	of a caption and a bunch of names on
8	only because even though they are	8	the south side of the caption
9	not a party to the agreement the	9	including my client. So we made
10	federal court ruled they get the	10	pursuant to the rules that permit us
11	benefit of whatever the arbitration	11	to make it under the NASD rules,
12	clause is and how it is interpreted	12	specifically permit us in that
13	as a codefendant with Prudential.	13	circumstance to go into court and
14	They are here even though they	14	compel that he arbitrate pursuant to
15	are not a party to the settlement	15	an arbitration clause that was in
16	agreement, but because they actually	16	the settlement agreement.
17	are a codefendant in the class	17	And in response to that motion
18	action and, therefore, get the	18	to compel my friend, Mr. Bortnick,
19	benefits, to the extent there are	19	made exactly the arguments that he
20	any benefits of an arbitration	20	is making today. He made exactly
21	clause that Prudential Securities	21	the argument that the NASD rules
22	gets.	22	forbid me to do what I did; he made
23	Thank you.	23	exactly that -- he argued that the
24	THE CHAIRMAN: Proceed.	24	rules of the NASD expressly and
25	MR. HARPER: Thank you, Mr.	25	unambiguously state that a claim
	[Page 15]		[Page 17]

[5] (Pages 14 to 17)

1		1	
2	submitted as a class action is not	2	York State Stock Exchange than I do,
3	eligible for arbitration.	3	that you can't, it doesn't have
4	Simply put because they are	4	jurisdiction over parties other than
5	not eligible for arbitration this	5	members. And Mr. Vaughn had named
6	court is the appropriate forum. It	6	Leeds Morelli and a bunch of lawyers
7	is beyond doubt that the NASD	7	from that firm and a bunch of John
8	prohibits the submission of claims	8	Does and so forth.
9	and so, therefore, under those rules	9	So the New York Stock Exchange
10	this court cannot compel an	10	said we have no jurisdiction over
11	arbitration.	11	this claim. And so back to court
12	That is what Mr. Vaughn argued	12	goes Mr. Vaughn and Mr. Bordnick.
13	in front of Judge Coate and Judge	13	And once more they make exactly the
14	Coate responded that the arbitration	14	same arguments that they are making
15	clause in the agreement contains	15	now to this panel, and that they had
16	sweeping language concerning the	16	previously made to Judge Coate.
17	scope of the questions committed to	17	So we went to Judge Coate and
18	arbitration, as it commits to	18	said -- they went to the one flora
19	arbitration any claim or controversy	19	that won't hear claims against
20	arising out of or related to the	20	nonmembers but the NASD does, so go
21	this agreement, meaning the	21	to the NASD. And in that Judge
22	settlement agreement or even the	22	Coate again sent Mr. Vaughn off to
23	interpretation thereof.	23	arbitration in December of '05. And
24	And Vaughn claims that the	24	then in May of '06, five months
25	arbitration clause is inconsistent	25	later or so, Mr. Vaughn files once
	[Page 18]		[Page 20]
1		1	
2	with the rules of the NASD, but this	2	again an identical piece of paper
3	interpretation contradicts the clear	3	saying the rules of the NASD forbid
4	statement that the arbitration	4	class actions, therefore, the
5	clause applies to any claim. Even	5	promise I made to arbitrate my claim
6	assuming that Mr. Vaughn was right	6	is invalid as to my class action
7	and the applicable arbitration	7	complaint, which is exactly the
8	rulings do apply and indeed forbid	8	argument that he had made to Judge
9	class arbitration, that it would be	9	Coate the first time and the second
10	plausible to interpret the	10	time.
11	arbitration clause required that all	11	And so we went into Judge
12	the claims be arbitrated and to	12	Coate. We said, Judge Coate, he is
13	disallow class action with no	13	asking you ladies and gentlemen to
14	further qualifications or caveats.	14	be the Second Circuit and to
15	The next thing that happened	15	overrule your ruling. And one of
16	was that Mr. Vaughn filed a claim	16	the interesting things that Judge
17	identical to the claim he has filed	17	Coate said was that she had before
18	here with the New York State Stock	18	her three documents. She had before
19	Exchange. And the New York State	19	her the original letter to the NA --
20	Stock Exchange has a rule that it	20	rather to the New York State Stock
21	will not exercise jurisdiction. It	21	Exchange setting forth the statment
22	is a plain black and white	22	of claim and the description
23	rule certainly known to my friend	23	following the ruling that she had
24	Mr. Bortnick who spends more time in	24	made.
25	these halls than I do and in the New	25	Second she had before her the
	[Page 19]		[Page 21]

[6] (Pages 18 to 21)

1		1	
2	claim, the statement of claim in	2	And I think, said Judge Coate,
3	this case, which again describes in	3	the presentation of the legal issue
4	detail or purports to, the issue	4	in those letters is inaccurate and
5	before this panel and the ruling and	5	misleading.
6	intention of Judge Coate.	6	So we are just -- where does
7	Finally, she had before her a	7	that leave us? I think what it
8	letter that was from Ms. Saenger on	8	leaves us with is that -- and I'll
9	behalf of Mr. Vaughn, that says that	9	make it now in an opening statement
10	because we've gotten the lists with	10	rather than later on interrupt the
11	your names on them among others, and	11	testimony -- I object, if I could do
12	that the letter says the skills and	12	it now, to any testimony from Mr.
13	knowledge options listed in the	13	Vaughn.
14	terms regarding the arbitration	14	First, on the grounds there is
15	selection process do not match the	15	no parole evidence permissible here
16	issue before the NASD in this case.	16	because the contract is clear and
17	Mr. Vaughn's statement of	17	unambiguous.
18	claim presents a very narrow issue	18	Second, because the whole
19	of whether he waived his right to a	19	thrust of his testimony, as Mr.
20	class action by signing the	20	Bortnick describes it, is that he
21	settlement agreement with Prudential	21	wants to go back to court to
22	Securities. Therefore, we request	22	litigate his claim. And that has
23	an arbitration possessing knowledge	23	already been adjudged something he
24	of the law of arbitration. And to	24	cannot do by Judge Coate.
25	that comment on September when we	25	Third, it is an integrated
	[Page 22]		[Page 24]
1		1	
2	went into court, and asked Judge	2	agreement as to which parole
3	Coate what is going on here, she	3	evidence as to one portion or
4	said a couple of interesting things.	4	another portion is prohibited.
5	She said, first, claimant	5	Fourth, because the standard
6	clearly agreed to arbitration of his	6	or the argument that is being -- the
7	claims and I ruled that the	7	evidence that is being offered for,
8	arbitration agreement was valid and	8	is that Mr. Vaughn did not give a
9	enforceable, and that legally was	9	knowing and voluntary waiver of his,
10	not in dispute. In other words,	10	quote, right to a class action.
11	under Judge Coate's ruling there is	11	Well, the lawyers in the room
12	no -- as a matter of law Mr. Vaughn	12	are familiar with the concept of
13	must arbitrate his individual claim.	13	knowing and voluntary waiver and
14	She then said in connection	14	what it applies to is substantive
15	with the order to show cause you	15	rights. If I'm going to waive my
16	have been given a set of documents	16	right to a privilege against
17	that include some of the plaintiff's	17	self-incrimination, my waiver of
18	submissions to the stock exchange	18	that right must be known and
19	and to the NASD including a February	19	voluntary. But there are scores of
20	and October 28th letter to the stock	20	cases, and we cite them that say
21	exchange, and a February 2nd letter,	21	that a waiver of a right to class
22	a statement of claim to the NASD,	22	action is simply a waiver of a
23	and the August 15, 2006 letter to	23	procedural means by which a
24	the NASD, the one I just read from	24	substantive right is adjudicated,
25	involving the arbitration.	25	and that the class action itself is
	[Page 23]		[Page 25]

[7] (Pages 22 to 25)

1		1	
2	not a substantive right.	2	THE CHAIRMAN: Perhaps you
3	And so, therefore, the	3	were not so offended.
4	standard of knowing involuntary	4	MR. HARPER: I don't offend
5	waiver has nothing to do with the	5	easily, when you have been at this a
6	enforceability of an arbitration	6	while.
7	agreement.	7	THE CHAIRMAN: Why don't you
8	The argument that the claimant	8	move on.
9	is making here is that he doesn't	9	MR. HARPER: I'm reading from
10	have to arbitrate his claim, and he	10	the judge's statement, page 5 now.
11	is seeking a declaratory judgment	11	Now should Mr. Vaughn decide
12	from you to that effect. He does	12	that he doesn't what to submit an
13	not even plead what his claim is.	13	individual claim to the arbitration
14	In other words, there is no	14	proceeding I expect, and I'm not
15	grievance he brings before you other	15	going to get a ruling on this now
16	than that he doesn't want to	16	but that he can't get a second bite
17	arbitrate, which is exactly what	17	at the apple, and I see plaintiff's
18	Judge Coate said he must do.	18	counsel nod in agreement, that a
19	And if you read Judge Coate's	19	forfeiture or waiver rules or res
20	September 5th transcript of '06, she	20	judicata would apply, and that's it.
21	warns Mr. Bortnick, she warned Mr.	21	He had an opportunity to
22	Bortnick that if he failed to file a	22	arbitrate the claim. Again, we are
23	claim that lacked the underlying	23	playing within our hypothetical, he
24	grievance here, the grievance	24	didn't arbitrate it and end of the
25	alleged in the class action, that	25	story. Mr. Bortnick can read into
	[Page 26]		[Page 28]
1		1	
2	Mr. Vaughn would forever waive and	2	that whatever he wants. I read it,
3	be barred from asserting that claim	3	I think it is pretty clear and so
4	and --	4	I'll end as I began.
5	MR. BORTNICK: I'm going to	5	This is now the fourth or
6	object. That is not flat-out untrue	6	fifth time I have been in front of
7	what she said. I have never, I	7	decision makers saying that Mr.
8	don't think I can remember objecting	8	Vaughn promised to arbitrate, and he
9	to an opening statement but that is	9	is here. And Judge Coate said that
10	flat-out untrue, and I know what	10	that's why he must arbitrate, it is
11	occurred because she was talking	11	legal and enforceable and he must
12	about an ethical issue and she	12	arbitrate his individual claim.
13	wanted to make sure Mr. Vaughn	13	And what Mr. Bortnick and Mr.
14	understood that if he lost in this	14	Vaughn are here to solicit from the
15	forum on this issue and he didn't	15	panel is a ruling that he need not
16	submit an individual claim then it	16	do so. And with the utmost respect
17	was gone. But it was never about	17	to this panel, the panel has no
18	the fact that if he won in this, it	18	right to do that.
19	was always understood he would have	19	THE CHAIRMAN: Thank you, Mr.
20	his claim in court and I strongly	20	Harper.
21	object to that.	21	MS. LEWIS: Thank you. I
22	MR. HARPER: I've never	22	would like to thank you all for your
23	interrupted an opening statement in	23	time today. I would like to start
24	my life, and I thought your	24	first directing your attention to
25	instruction --	25	what I hope will be an easily
	[Page 27]		[Page 29]

[8] (Pages 26 to 29)

1
2 disposed of matter, and that's the
3 bad faith inclusion of claims
4 against the individual respondent in
5 this proceeding.
6 Separate and apart from the
7 arbitration ruling in the decision
8 by Judge Coate filed on March 20,
9 2006, which is annexed to our
10 submission as Exhibit G by Judge
11 Coate determined that the individual
12 respondents named in this procedure
13 were dismissed from the case not
14 because of the arbitration clause
15 but because of the lack of
16 jurisdiction. And in response to a
17 cross-motion to extend their time to
18 serve these defendants in that
19 matter, the court indicated that the
20 plaintiff had shown a complete
21 disregard and disinterest in getting
22 them in as parties in this action.
23 So whether or not or whatever
24 this panel concludes as to the
25 arbitrability of this matter, these
[Page 30]

1
2 respondents cannot be sent back to
3 federal court. With due deference
4 to this panel there is simply no
5 authority for you to overrule the
6 jurisdictional determination of a
7 federal court that there is no
8 jurisdiction over these individuals.
9 That defense was included in
10 the answer served by the individual
11 respondent. It was fully briefed in
12 the moving papers. It was ignored
13 in the opposition by the claimant
14 and required our reply, when not
15 given multiple opportunities no
16 possible basis has or can be
17 advanced for including these
18 individual defendants and they have
19 been dismissed from the federal
20 action in an application for
21 declaratory judgment saying that
22 they can go back to court against
23 them.
24 And I would submit to you that
25 not only should they be dismissed
[Page 31]

1
2 but those individuals should be
3 given all costs that they incurred
4 in defending what was brought from
5 nothing more than intimidation.
6 That's the first part. And again
7 because there has been no opposition
8 to that application, I presume that
9 that looking at this decision,
10 looking at the submissions by the
11 parties, that can be fairly easily
12 determined.
13 The remainder of the
14 application that applies to this
15 declaratory judgment for permission
16 to go back, which would apply
17 against the law firm or potentially
18 and one of the respondents, I
19 certainly join in the able argument
20 that was put forward by Mr. Harper
21 in terms of what has already been
22 determined by Judge Coate. There is
23 a requirement under the law that if
24 we are going to eviscerate an
25 arbitration provision, it has to be
[Page 32]

1
2 said with positive assurance that
3 the parties did not intend to the
4 matter to be submitted for
5 arbitration.
6 The only thing that we can say
7 with positive assurance in this case
8 is based upon the facts that there
9 is a settlement clause in the
10 settlement agreement that applies to
11 this dispute that requires any claim
12 or controversy regarding the
13 agreement or its interpretation to
14 be determined by arbitration under
15 the rules of either the NASD or the
16 New York State Stock Exchange.
17 Now, any claim or dispute --
18 excuse me, any claim or controversy
19 is self-evident as to its meaning on
20 its face. And any effort to
21 introduce testimony contrary to the
22 clear meaning of any claim or
23 controversy must be arbitrated is
24 impermissible under the standard
25 contract interpretation laws and
[Page 33]

[9] (Pages 30 to 33)

1		1	
2	against established policy which	2	the meaning or even address the
3	requires positive assurance that	3	meaning of a clear phrase in the
4	something is not included, but we	4	contract would make all contracts
5	have even more positive assurance	5	unenforceable. Because everybody
6	here based upon Judge Coate's	6	could come in and say, oh, I changed
7	decision that said no matter what	7	my mind and what I really intended
8	else, the first decision, her	8	was this or that. It is just here
9	statement on the record later on, no	9	the language is so clear based upon
10	matter what else Mr. Vaughn's	10	the agreement, which I suggest is
11	individual claims must be	11	the piece of evidence in this case.
12	arbitrated.	12	It would be inappropriate. That's
13	She said there were three	13	all I have to say right now.
14	other possibilities, as Mr. Bortnick	14	THE CHAIRMAN: Thank you, Ms.
15	said which all agree that one of	15	Lewis.
16	them is not likely, that the NSAD	16	We are ready for the
17	will take a class arbitration.	17	presentation of evidence starting
18	The other two options that she	18	with the claimant.
19	recognized as plausible did not	19	MR. BORTNICK: Thank you, I
20	include Mr. Vaughn going back on his	20	call Mr. Vaughn.
21	individual claim.	21	MR. HARPER: I take it for
22	And the next thing that we	22	the record, Mr. Chair, that you have
23	have positive assurance about and we	23	overruled my objection.
24	have it because in their submission	24	THE CHAIRMAN: No, I want to
25	Mr. Vaughn stated that his	25	to hear what he has to say before
	[Page 34]		[Page 36]
1		1	
2	individual claim was identical to	2	and I also want to hear from the
3	and part of the class action claim,	3	other side. It is not no one has
4	that there is nothing that's	4	responded to your argument.
5	fictionally out there as a class	5	MR. HARPER: Fine, I beg your
6	action that he can go back for, back	6	pardon.
7	to court on and still arbitrate as	7	MR. BORTNICK: At this time I
8	an individual claim because they are	8	think it it is probably easier if I
9	one and the same.	9	just introduce the first three
10	So clearly what we have, and I	10	exhibits before we get going with
11	think part of the issue here, is	11	Mr. Vaughn.
12	that Mr. Vaughn is asking, framing	12	THE CHAIRMAN: Fine.
13	the wrong question, it is not	13	MR. BORTNICK: Exhibit Number
14	whether, as Mr. Harper suggested	14	1 is going to be the opinion and
15	there is intentional waiver of the	15	order of Judge Coate dated August
16	class action but whether or not the	16	12, 2005.
17	parties intended Mr. Vaughn to	17	Exhibit Number 2 is going to
18	arbitrate his claims. And that has	18	be the transcript of the hearing in
19	already been determined, and any	19	front of Judge Coate dated September
20	parole evidence by Mr. Vaughn or my	20	5, 2006.
21	client Mr. Morelli, would be	21	And Exhibit 3 is going to be
22	inappropriate.	22	the settlement agreement between Mr.
23	The phrase is apparent and	23	Vaughn and Prudential dated October
24	clear on its face, and to allow any	24	1998.
25	party or their attorney to attack	25	MR. HARPER: We have one
	[Page 35]		[Page 37]

[10] (Pages 34 to 37)

1 signed by both parties.
 2 MR. BORTNICK: That's fine,
 3 we would be happy to do that.
 4 MR. HARPER: Why don't we use
 5 that one.
 6 MR. BORTNICK: Okay.
 7 JEFFREY S. VAUGHN,
 8 having been first duly sworn by a the
 9 Chairman was examined and testified as
 10 follows:
 11 (Exhibit Number 1, opinion and
 12 order of Judge Coate dated August
 13 12, 2005 marked for identification,
 14 as of this date.)
 15 (Exhibit Number 2, transcript
 16 of the hearing in front of Judge
 17 Coate dated September 5, 2006 marked
 18 for identification, as of this
 19 date.)
 20 (Exhibit Number 3, settlement
 21 agreement between Mr. Vaughn and
 22 Prudential Securities, dated October
 23 1998 marked for identification, as
 24 of this date.)
 25

[Page 38]

1 J. Vaughn
 2 EXAMINATION BY
 3 MR. BORTNICK:
 4 Q. Mr. Vaughn, on Exhibit Number
 5 2, the transcript, I would like you to
 6 turn to page 14.
 7 A. Yes.
 8 Q. Line 19 of the transcript that
 9 begins with "I did not," can you read that
 10 through the next two sentences?
 11 A. I did not rule --
 12 MR. HARPER: I object. You
 13 can read this as well as the witness
 14 is the witness reading what Judge
 15 Coate said to the panel.
 16 THE CHAIRMAN: Proceed.
 17 MR. BORTNICK: We just heard
 18 here two attorneys telling this
 19 panel what the judge said. I
 20 thought it would be a much better
 21 idea, it is a much better idea, it
 22 is very short let's put it in front
 23 of the panel and read it out loud,
 24 so everybody can hear it what the
 25 judge said why we are here.

[Page 39]

1 J. Vaughn
 2 THE CHAIRMAN: I will permit
 3 it, overruled.
 4 Q. Start with "I did not."
 5 A. "I did not rule that
 6 everything had to be subject to
 7 arbitration. I contemplated, therefore,
 8 that the arbitrator in deciding the
 9 parties intentions might decide that their
 10 agreement to arbitrate does not foreclose
 11 the plaintiffs from coming to court and
 12 litigating a class action."
 13 Q. If you turn over to page 15 --
 14 A. Yes.
 15 Q. -- and just read the next
 16 sentence beginning at line 3 with "but"
 17 just the one sentence.
 18 A. "But I think it would be wrong
 19 for the defendants to characterize it the
 20 way you are today, to suggest that the
 21 arbitrators' hands are bound in some way
 22 such that they couldn't rule in
 23 interpreting the party's intent that the
 24 plaintiff has the right to come to court
 25 and proceed on a class action."

[Page 40]

1 J. Vaughn
 2 Q. Thank you. Mr. Vaughn, now,
 3 you had actually filed a class action in
 4 court?
 5 A. Yes.
 6 Q. If you turn to Arbitrator's
 7 Exhibit 1, is this the amended complaint
 8 that you filed in front of Judge Coate?
 9 A. Yes.
 10 Q. And the date of this amended
 11 complaint is what?
 12 Is there an affidavit of
 13 service attached to it?
 14 A. Yes.
 15 Q. When was it served?
 16 MS. LEWIS: Objection. There
 17 has been a legal determination as to
 18 the service on various parties. In
 19 fact the legal determination that
 20 five of the parties were not served.
 21 I do not believe that this witness
 22 has any personal knowledge of
 23 service of any legal document.
 24 MR. BORTNICK: The only
 25 purpose here is to just, so that it

[Page 41]

[11] (Pages 38 to 41)

<p>1 J. Vaughn</p> <p>2 is all clear that at the time Judge</p> <p>3 Coate made these statements on the</p> <p>4 record, she had in front of her the</p> <p>5 complaint that Mr. Vaughn had filed</p> <p>6 a class action complaint and then</p> <p>7 she thereafter made the statement</p> <p>8 many times. That's all.</p> <p>9 THE CHAIRMAN: We will note</p> <p>10 that.</p> <p>11 Q. Mr. Vaughn, I'm not sure you</p> <p>12 stated your full name for the record,</p> <p>13 would you please state your full name.</p> <p>14 A. Jeffrey Sherwood Vaughn.</p> <p>15 Q. Just very briefly, what's your</p> <p>16 educational background?</p> <p>17 A. Finance at Pace in 1985.</p> <p>18 Q. You received what degree?</p> <p>19 A. BA in finance.</p> <p>20 Q. And there came a time where</p> <p>21 you became employed by Prudential</p> <p>22 Securities?</p> <p>23 A. That's correct.</p> <p>24 Q. When was that?</p> <p>25 A. In February of '85.</p> <p style="text-align: right;">[Page 42]</p>	<p>1 J. Vaughn</p> <p>2 that were done on the floor of the</p> <p>3 exchange. Breaks meaning discrepancies</p> <p>4 between transactions that went on the</p> <p>5 prior day. Or like I said up to some</p> <p>6 point, up until the settlement I was the,</p> <p>7 one of the key people in making sure the</p> <p>8 company had no exposure.</p> <p>9 Q. This was a back office</p> <p>10 function?</p> <p>11 A. Yes, this was a back office</p> <p>12 function.</p> <p>13 Q. And how long did you remain in</p> <p>14 this job?</p> <p>15 A. For maybe four years I would</p> <p>16 say.</p> <p>17 Q. And then what was your next</p> <p>18 job?</p> <p>19 A. The next job was trade support</p> <p>20 specialist, which I actually worked on the</p> <p>21 block trading desk working with the</p> <p>22 traders and the back office in P&S, and</p> <p>23 pretty much a liaison between the traders</p> <p>24 and the floor of the exchange and our</p> <p>25 Prudential block office.</p> <p style="text-align: right;">[Page 44]</p>
<p>1 J. Vaughn</p> <p>2 Q. And what was the firm known as</p> <p>3 at the time?</p> <p>4 A. Pru Bache, I believe.</p> <p>5 Q. Prudential Bache?</p> <p>6 A. Yes.</p> <p>7 Q. Were you licensed in the</p> <p>8 securities industry at any time such as a</p> <p>9 Series 7 or any other security license?</p> <p>10 A. No.</p> <p>11 Q. Have you ever received a</p> <p>12 security license?</p> <p>13 A. No.</p> <p>14 Q. What was your first job with</p> <p>15 Prudential Securities?</p> <p>16 A. Operations clerk.</p> <p>17 Q. And what did those job</p> <p>18 responsibilities entail?</p> <p>19 A. Pretty much to take care of</p> <p>20 all back office issues that were</p> <p>21 pertaining to trades that were done the</p> <p>22 prior day or any day before the settlement</p> <p>23 of trades.</p> <p>24 Q. Can you give me an example?</p> <p>25 A. Pretty much whatever breaks</p> <p style="text-align: right;">[Page 43]</p>	<p>1 J. Vaughn</p> <p>2 Q. The block trading desk is a</p> <p>3 large number of shares being traded at one</p> <p>4 time?</p> <p>5 A. Yes.</p> <p>6 Q. For example, 20,000 shares of</p> <p>7 IBM that would be a block trade?</p> <p>8 A. Yes.</p> <p>9 Q. A big one?</p> <p>10 A. No, a small one.</p> <p>11 Q. And this again was a back</p> <p>12 office function?</p> <p>13 A. Yes, it was.</p> <p>14 Q. And how long did you remain</p> <p>15 employed with Prudential?</p> <p>16 A. For a total of about 13 years.</p> <p>17 Q. When did you leave?</p> <p>18 A. In '98 I want to I believe it</p> <p>19 was November of '98.</p> <p>20 Q. Was it before or after you</p> <p>21 signed Exhibit 3 the settlement agreement?</p> <p>22 A. After.</p> <p>23 Q. And you stayed with Prudential</p> <p>24 through all of its name changes?</p> <p>25 A. Yes, I did.</p> <p style="text-align: right;">[Page 45]</p>

[12] (Pages 42 to 45)

<p>1 J. Vaughn</p> <p>2 Q. But it was always as a broker</p> <p>3 dealer?</p> <p>4 A. Yes.</p> <p>5 Q. The respondent party here</p> <p>6 today?</p> <p>7 A. Meaning.</p> <p>8 Q. Prudential Financial?</p> <p>9 A. Now it is Prudential</p> <p>10 Financial, when I left it was Prudential</p> <p>11 Securities.</p> <p>12 Q. Now, did there come a time</p> <p>13 where you retained the law firm of Leeds</p> <p>14 Morelli & Brown to represent you?</p> <p>15 A. Yes, I did.</p> <p>16 Q. You heard the opening</p> <p>17 statement from Mr. Harper which said it</p> <p>18 was January of 1998; does that sound about</p> <p>19 right?</p> <p>20 A. That's when I signed the</p> <p>21 retainer, that's correct.</p> <p>22 Q. When did you first start</p> <p>23 talking with Leeds Morelli & Brown?</p> <p>24 A. Probably back in November the</p> <p>25 prior year.</p> <p style="text-align: right;">[Page 46]</p>	<p>1 J. Vaughn</p> <p>2 THE CHAIRMAN: When he</p> <p>3 retained Leeds Morelli & Brown to</p> <p>4 prosecute the discrimination case.</p> <p>5 A. Meaning where?</p> <p>6 Q. In court.</p> <p>7 A. In court.</p> <p>8 Q. Had you had exposure to the</p> <p>9 New York Stock Exchange, the NASD or any</p> <p>10 securities industry arbitration up until</p> <p>11 that point?</p> <p>12 A. No.</p> <p>13 Q. Other than the proceeding we</p> <p>14 are in today and events that led up to</p> <p>15 this particular proceeding, have you ever</p> <p>16 had any exposure to New York State Stock</p> <p>17 Exchange or NASD arbitration?</p> <p>18 A. Yes.</p> <p>19 Q. What was your exposure?</p> <p>20 A. Well, number one, there was a</p> <p>21 mediation hearing about my particular case</p> <p>22 within the rest of the people who had come</p> <p>23 forward from Prudential. And then after</p> <p>24 that there was a -- I had to testify</p> <p>25 against Tony Carranate who came in and</p> <p style="text-align: right;">[Page 48]</p>
<p>1 J. Vaughn</p> <p>2 Q. And just very briefly what was</p> <p>3 the subject matter that you asked Leeds</p> <p>4 Morelli & Brown Leeds to represent you in?</p> <p>5 A. Briefly it was a hostile work</p> <p>6 environment, a discrimination issue.</p> <p>7 Q. Were you the only person</p> <p>8 represented by Leeds Morelli & Brown who</p> <p>9 were employees of Prudential with respect</p> <p>10 to this matter?</p> <p>11 A. No.</p> <p>12 Q. How many were there?</p> <p>13 A. Initially it probably started</p> <p>14 out to be about maybe 50 people and as it</p> <p>15 went on it ended up to be about 400 or a</p> <p>16 little more maybe.</p> <p>17 Q. Over the same issue?</p> <p>18 A. Yes.</p> <p>19 Q. Was it your intention at that</p> <p>20 time to file a lawsuit?</p> <p>21 A. Yes.</p> <p>22 Q. Where were you intending to</p> <p>23 file a lawsuit at that time?</p> <p>24 MS. LEWIS: At what point in</p> <p>25 time?</p> <p style="text-align: right;">[Page 47]</p>	<p>1 J. Vaughn</p> <p>2 wanted to or I guess he was going after</p> <p>3 Prudential for whatever reasons and I had</p> <p>4 to testify against him.</p> <p>5 Q. In arbitration? He was part of</p> <p>6 the management?</p> <p>7 A. He was part of the management.</p> <p>8 Yes.</p> <p>9 Q. He was suing Prudential?</p> <p>10 A. Yes.</p> <p>11 Q. And you were brought in as a</p> <p>12 witness for Prudential?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever had any other</p> <p>15 exposure to the arbitration process?</p> <p>16 A. No.</p> <p>17 Q. Now, did there come a time</p> <p>18 when your case settled?</p> <p>19 A. Yes.</p> <p>20 Q. And is Exhibit 3 your</p> <p>21 settlement agreement?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Do you recall when you saw</p> <p>24 your settlement agreement for the first</p> <p>25 time?</p> <p style="text-align: right;">[Page 49]</p>

[13] (Pages 46 to 49)

<p>1 J. Vaughn</p> <p>2 A. Yes, I do.</p> <p>3 Q. When was that?</p> <p>4 A. It was at a fundraiser for</p> <p>5 Carl McCall at Tavern on the Green</p> <p>6 probably in November of '98.</p> <p>7 Q. Was it the day you signed your</p> <p>8 agreement?</p> <p>9 A. Yes, it was.</p> <p>10 Q. So I just want to be clear,</p> <p>11 you saw it for the first time that was the</p> <p>12 day you signed it?</p> <p>13 A. The first time I saw my</p> <p>14 agreement was in the bathroom of Tavern on</p> <p>15 the Green that's where I signed it.</p> <p>16 Q. You saw it for the first time</p> <p>17 and signed it in the bathroom at Tavern on</p> <p>18 the Green?</p> <p>19 A. Yes.</p> <p>20 Q. Who showed it to you?</p> <p>21 A. Jeffrey Brown.</p> <p>22 Q. He was one of the partners of</p> <p>23 Leeds Morelli & Brown?</p> <p>24 A. Yes.</p> <p>25 Q. What were the circumstances of</p> <p style="text-align: right;">[Page 50]</p>	<p>1 J. Vaughn</p> <p>2 it to some point and just made it clear to</p> <p>3 me that this is somewhat of a gag order</p> <p>4 for the most part. Just, you can't say</p> <p>5 anything, and you can't come back to</p> <p>6 Prudential and go public which I guess at</p> <p>7 the time we were trying, we wanted to make</p> <p>8 this public. And they said that if you</p> <p>9 sign this you can't go public. That was</p> <p>10 the gist of the conversation.</p> <p>11 Q. Any other or anything else</p> <p>12 that you discussed?</p> <p>13 A. No.</p> <p>14 Q. Just that point?</p> <p>15 A. Yes.</p> <p>16 Q. If you would take a look at</p> <p>17 paragraph 14 of your of Exhibit 3 the</p> <p>18 settlement agreement --</p> <p>19 A. Yes.</p> <p>20 Q. -- where it where it says</p> <p>21 arbitration.</p> <p>22 A. Yes.</p> <p>23 Q. Did you discuss that clause at</p> <p>24 all with Mr. Brown?</p> <p>25 A. No.</p> <p style="text-align: right;">[Page 52]</p>
<p>1 J. Vaughn</p> <p>2 your seeing it in the bathroom?</p> <p>3 A. We were invited there by Leeds</p> <p>4 Morelli & Brown to it was a fundraiser for</p> <p>5 Carl McCall he was running for New York</p> <p>6 State Comptroller, and we were invited and</p> <p>7 not only myself but a few other people</p> <p>8 were introduced to their settlement</p> <p>9 agreements there for the first time. So I</p> <p>10 just --</p> <p>11 Q. Mr. Vaughn, were you sitting</p> <p>12 at table and he said here is your</p> <p>13 agreement? What were the circumstances.</p> <p>14 A. No, again, like I said I saw</p> <p>15 it for the first time in the men's room.</p> <p>16 Q. Where did you sign it?</p> <p>17 A. In the men's room.</p> <p>18 Q. How long did you review it in</p> <p>19 the men's room?</p> <p>20 A. Briefly, maybe about three or</p> <p>21 four minutes or five minutes tops.</p> <p>22 Q. Was Mr. Brown there with you?</p> <p>23 A. Yes.</p> <p>24 Q. Did he say anything to you?</p> <p>25 A. Pretty much, he just went over</p> <p style="text-align: right;">[Page 51]</p>	<p>1 J. Vaughn</p> <p>2 Q. Did you have any understanding</p> <p>3 of what the arbitration procedures were</p> <p>4 under the prevailing constitution of rules</p> <p>5 of the New York State Stock Exchange Inc</p> <p>6 or the National Association of Securities</p> <p>7 Dealers Inc.?</p> <p>8 A. No, not in totality.</p> <p>9 Q. Did you know whether they had</p> <p>10 any rules concerning class actions?</p> <p>11 A. No, I didn't.</p> <p>12 Q. Did you have the intent to</p> <p>13 waive a class action when you read it?</p> <p>14 A. No.</p> <p>15 Q. Did you discuss that clause</p> <p>16 with Mr. Brown?</p> <p>17 A. No, not at all.</p> <p>18 Q. At the time you signed this</p> <p>19 agreement, did you believe that you were</p> <p>20 waiving your rights to bring a class</p> <p>21 action based upon this agreement?</p> <p>22 A. No, and I didn't give it any</p> <p>23 thought either.</p> <p>24 MR. BORTNICK: I have nothing</p> <p>25 further.</p> <p style="text-align: right;">[Page 53]</p>

[14] (Pages 50 to 53)

1 J. Vaughn	1 J. Vaughn
2 THE CHAIRMAN: Thank you,	2 A. Yes.
3 you may proceed.	3 Q. How many mediators?
4 MR. BORTNICK: Thank you, Mr.	4 A. I don't remember.
5 Chairman.	5 Q. You don't remember the names?
6 EXAMINATION BY	6 A. No.
7 MR. HARPER:	7 Q. Let me show you what your
8 Q. Good morning, Mr. Vaughn.	8 lawyer marked as Panel Exhibit 1 just a
9 A. Good morning.	9 moment ago, and if I could direct your
10 Q. My name is Gerard Harper, I	10 attention to paragraph 14.
11 represent Prudential.	11 A. Yes.
12 A. Yes.	12 Q. Panel Exhibit 1 --
13 Q. I take it you have testified	13 THE CHAIRMAN: Isn't that the
14 before at least once?	14 amended complaint?
15 A. Yes.	15 MR. HARPER: Yes.
16 Q. And that was in the	16 MR. BORTNICK: It is part of
17 arbitration against Mr. Carranate?	17 Arbitrator Exhibit 1, it is not
18 A. Yes.	18 Panel Exhibit 1.
19 Q. And any other time?	19 MR. HARPER: I'm sorry.
20 A. No, other than the mediation	20 Q. Could you turn to paragraph 14
21 that we went through with Prudential.	21 of part of Arbitrator Exhibit 1 --
22 Q. When you say you testified at	22 A. Yes.
23 a mediation were you sworn in?	23 Q. -- and read that paragraph 14,
24 A. If I remember correctly, yes.	24 page 4?
25 Q. And who was the mediator?	25 A. Yes.
[Page 54]	[Page 56]
1 J. Vaughn	1 J. Vaughn
2 A. I can't tell you that, I don't	2 Q. Can you read that out loud?
3 remember.	3 A. "Upon information and belief,
4 Q. Where was it held?	4 Leeds Morelli & Brown and the lawyer
5 A. It was held in, I want to	5 defendant's without plaintiff's knowledge
6 believe it was the NASDAQ building over	6 agreed to cap various claims under their
7 here by across the street from I don't	7 agreement with PSI and refused to press
8 know the exact address but it's across the	8 plaintiff's claims until they received
9 street from New York Plaza.	9 payment from PSI which payments were
10 Q. And who was present?	10 concealed from plaintiff and plaintiff's
11 A. I mean who was present, it	11 class."
12 would have been Leeds, Morelli myself and	12 Q. What is your information and
13 the panel.	13 belief to that?
14 Q. Was Mr. Leeds and Mr. Morelli	14 A. I have no idea.
15 there?	15 Q. Now, you left Prudential in
16 A. If I remember correctly, yes,	16 1998?
17 they all were there.	17 A. That's correct.
18 Q. When you say all, you mean	18 Q. And why don't you take a look
19 Leeds?	19 at your settlement agreement which is
20 A. Morelli and Brown was there.	20 Exhibit 3?
21 Q. And you were there?	21 A. Yes.
22 A. Yes.	22 Q. And that is your signature on
23 Q. Was your wife there?	23 page 4?
24 A. No, my wife wasn't there.	24 A. Yes.
25 Q. And the mediator was there?	25 Q. Who wrote the date in there,
[Page 55]	[Page 57]

[15] (Pages 54 to 57)

<p>1 J. Vaughn</p> <p>2 is that your handwriting?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you recognize that?</p> <p>5 A. No.</p> <p>6 Q. Do you remember whether that</p> <p>7 was the date of the McCall fundraiser?</p> <p>8 A. Possibly because I believe I</p> <p>9 left in the early part of November, so</p> <p>10 that it could possibly be the date.</p> <p>11 Q. Well, let's turn to page 1 of</p> <p>12 Exhibit 3.</p> <p>13 A. Yes.</p> <p>14 Q. Could you read paragraph 1,</p> <p>15 the first page?</p> <p>16 A. Yes. "Separation from</p> <p>17 employment, Vaughn's last date of</p> <p>18 employment at PSI shall be October 23,</p> <p>19 1998."</p> <p>20 Q. Does that refresh your</p> <p>21 recollection that you signed this</p> <p>22 agreement after your last day of</p> <p>23 employment at PSI?</p> <p>24 A. No.</p> <p>25 Q. Is that statement false?</p> <p style="text-align: right;">[Page 58]</p>	<p>1 J. Vaughn</p> <p>2 was still an employee of Prudential as far</p> <p>3 as I remember as of October 23.</p> <p>4 Q. So you could have been orally</p> <p>5 notified that your claim had been resolved</p> <p>6 and understood that your last day was to</p> <p>7 be October 23, 1998 and then signed the</p> <p>8 paperwork four days later?</p> <p>9 A. I can't say, I don't remember.</p> <p>10 Q. You have no reason to doubt as</p> <p>11 you sit here today that the statements in</p> <p>12 the document itself are accurate?</p> <p>13 A. No, I don't have a reason to</p> <p>14 doubt it.</p> <p>15 Q. Thank you.</p> <p>16 Now, you mentioned that you</p> <p>17 retained Leeds & Morelli and your best</p> <p>18 estimate was January of 1998; do you</p> <p>19 recall that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you sign an agreement with</p> <p>22 Leeds & Morelli?</p> <p>23 A. Leeds & Morelli and myself we</p> <p>24 talked in the latter part of the year</p> <p>25 before I signed that retainer. So did I</p> <p style="text-align: right;">[Page 60]</p>
<p>1 J. Vaughn</p> <p>2 A. I don't recall. I don't</p> <p>3 recall.</p> <p>4 Q. But you have no reason to</p> <p>5 doubt, as you sit here today, that you</p> <p>6 executed the document on or about October</p> <p>7 27, 1998 and that your last date of</p> <p>8 employment was four days before?</p> <p>9 A. No, I don't necessarily agree</p> <p>10 with that.</p> <p>11 Q. If you don't agree with that,</p> <p>12 then tell me what is in your mind that</p> <p>13 makes you doubt the authenticity and</p> <p>14 accuracy of the document?</p> <p>15 A. Because when I left Prudential</p> <p>16 before I had anything in writing stating</p> <p>17 what my last day was, I got a call from</p> <p>18 Leeds Morelli & Brown at the job 4 o'clock</p> <p>19 in the afternoon -- and I remember this</p> <p>20 clearly -- they said if you choose to, you</p> <p>21 do not have to go back to Prudential</p> <p>22 anymore we have X, Y and Z for you, that's</p> <p>23 it. You let us know what you want to do.</p> <p>24 And that's what I remember.</p> <p>25 It could have been that day, but clearly I</p> <p style="text-align: right;">[Page 59]</p>	<p>1 J. Vaughn</p> <p>2 sign a retainer when I first was</p> <p>3 introduced to them, no, this took about a</p> <p>4 month or so before I did.</p> <p>5 MR. BORTNICK: Would you</p> <p>6 read back the question, please.</p> <p>7 (A portion of the record was</p> <p>8 read.)</p> <p>9 Q. Yes?</p> <p>10 A. Yes.</p> <p>11 Q. Let me show you a document</p> <p>12 that will be marked as whatever you want</p> <p>13 to mark it as?</p> <p>14 MR. BORTNICK: Respondents'</p> <p>15 Exhibit 1.</p> <p>16 MR. HARPER: That's fine.</p> <p>17 (Respondents' Exhibit 1,</p> <p>18 agreement marked for identification,</p> <p>19 as of this date.)</p> <p>20 Q. You weren't fired by</p> <p>21 Prudential, correct?</p> <p>22 A. No.</p> <p>23 Q. I'm incorrect?</p> <p>24 A. No, I wasn't fired by</p> <p>25 Prudential.</p> <p style="text-align: right;">[Page 61]</p>

[16] (Pages 58 to 61)

1 J. Vaughn
2 Q. You left voluntarily?
3 A. Yes.
4 Q. And now, when you initially
5 retained Leeds Morelli, it was for the
6 purpose of negotiating a settlement with
7 PSI; isn't that right?
8 A. No, that is not right.
9 Q. When you signed the retainer
10 agreement with Leeds Morelli, you did so
11 to retain them to negotiate settlement
12 with PSI, correct?
13 A. No.
14 Q. Look at the first paragraph of
15 paragraph 1.
16 A. Yes.
17 Q. And let me rephrase the
18 question for you.
19 A. Yes.
20 Q. You say you met with Leeds
21 Morelli sometime in November --
22 A. Yes.
23 Q. -- of what I guess was '97.
24 A. Yes.
25 Q. Did you call them or did they

[Page 62]

1 J. Vaughn
2 call you?
3 A. I didn't call them. I was
4 referred to them by another colleague who
5 had already retained them.
6 Q. Who?
7 A. Connie Hernandez.
8 Q. And what did Ms. Hernandez say
9 to you and what did you say to her?
10 A. Connie expressed to me that
11 she knew I was looking for a lawyer as
12 well because of the issues that were going
13 on at Prudential, and I wanted to do
14 something about it.
15 So Connie told me she already
16 had a lawyer that she had signed a
17 retainer for, she said they were good and
18 that maybe it would be better that I join
19 them rather than have an individual,
20 another lawyer, and not have the esteem it
21 would be if you had more than one person
22 being retained by a particular firm.
23 Q. And that happened in around
24 November of?
25 A. November, December of '97.

[Page 63]

1 J. Vaughn
2 Q. And then you subsequently
3 executed a retainer agreement with Leeds
4 Morelli, correct?
5 A. That's correct.
6 Q. And in that retainer agreement
7 the first thing that Leeds Morelli
8 promised to do was to negotiate a
9 settlement with PSI on your behalf,
10 correct?
11 A. I don't know that.
12 Q. Read paragraph 1 of the
13 retainer agreement.
14 A. "The retainer will only
15 include the contacting of employee to seek
16 a negotiated settlement."
17 Q. Stop for a minute. Is there
18 any word in that sentence you don't
19 understand?
20 A. No.
21 Q. And so the retainer agreement
22 in the first instance was only to contact
23 PSI to seek a negotiated settlement,
24 correct?
25 A. According to the retainer,

[Page 64]

1 J. Vaughn
2 yes.
3 Q. And then if you would read the
4 second sentence, please.
5 A. "If legal action is required
6 then the parties will discuss a different
7 financial situation."
8 Q. So the first task that you
9 gave Leeds Morelli was to go seek a
10 settlement of your claims?
11 A. In correct.
12 Q. Well --
13 A. Whatever this says here is one
14 thing, I'm telling you that is incorrect.
15 Q. So this contract means nothing
16 too?
17 A. I didn't say it doesn't mean
18 anything. You are asking me, and I'm
19 being totally honest with you, no, that is
20 not the case.
21 Q. You didn't understand it when
22 you read it?
23 A. You got to -- okay.
24 Q. Did you understand?
25 A. Yes, I understood.

[Page 65]

[17] (Pages 62 to 65)

<p>1 J. Vaughn</p> <p>2 Q. Did you read it?</p> <p>3 A. Yes.</p> <p>4 Q. Did you read it in the men's</p> <p>5 room or somewhere else?</p> <p>6 A. I don't remember where I read</p> <p>7 it.</p> <p>8 Q. Did you read it in their</p> <p>9 office?</p> <p>10 A. I don't remember.</p> <p>11 Q. Have you ever been to their</p> <p>12 office?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. I don't recall.</p> <p>16 Q. And you read this before you</p> <p>17 signed it?</p> <p>18 A. Yes.</p> <p>19 Q. And you understood it?</p> <p>20 A. I understood the agreement</p> <p>21 that I had with Leeds & Morelli, again.</p> <p>22 Q. Now, let's go back to</p> <p>23 paragraph 6 --</p> <p>24 A. Yes.</p> <p>25 Q. -- read that out loud.</p> <p style="text-align: right;">[Page 66]</p>	<p>1 J. Vaughn</p> <p>2 sentence.</p> <p>3 A. "All parties have read this,</p> <p>4 understood each and every term herein, and</p> <p>5 the signature below constitutes an</p> <p>6 acknowledgement of such an understanding."</p> <p>7 Q. Now do you understand all the</p> <p>8 words there?</p> <p>9 A. Clearly.</p> <p>10 Q. Was that true when you signed</p> <p>11 it, when you promised and acknowledged</p> <p>12 that all, that you read it understood it;</p> <p>13 was it true at the time?</p> <p>14 A. No.</p> <p>15 Q. It was false?</p> <p>16 A. Yes.</p> <p>17 Q. So you lied when you signed</p> <p>18 your name to this contract?</p> <p>19 A. I didn't lie no more than the</p> <p>20 person who signed above my name.</p> <p>21 Q. Was paragraph 7 true or false</p> <p>22 when you signed it?</p> <p>23 A. I believe I just answered that</p> <p>24 question.</p> <p>25 Q. Tell it to me again.</p> <p style="text-align: right;">[Page 68]</p>
<p>1 J. Vaughn</p> <p>2 A. "There are no other agreements</p> <p>3 between the parties other than those</p> <p>4 contained here in this agreement</p> <p>5 represents the entire understanding of the</p> <p>6 parties."</p> <p>7 Q. Is there any word or phrase in</p> <p>8 that sentence or paragraph that you do not</p> <p>9 understand?</p> <p>10 A. I understand it clearly.</p> <p>11 Q. You understand it clearly?</p> <p>12 A. Yes.</p> <p>13 Q. So whatever agreement you had</p> <p>14 with Leeds & Morelli as of January 5, 1998</p> <p>15 was in these two pages, right?</p> <p>16 A. According to this, yes.</p> <p>17 Q. According to this?</p> <p>18 A. Yes.</p> <p>19 Q. And so there was no other</p> <p>20 contract between you?</p> <p>21 A. Again, do you want to talk</p> <p>22 about what is on paper or do you want to</p> <p>23 talk about what we agreed upon?</p> <p>24 Q. You see I can only talk about</p> <p>25 what is on paper. Let's read the next</p> <p style="text-align: right;">[Page 67]</p>	<p>1 J. Vaughn</p> <p>2 A. No. When you asked him to</p> <p>3 repeat the question, could you repeat the</p> <p>4 answer --</p> <p>5 THE CHAIRMAN: Mr. Vaughn,</p> <p>6 answer the question, please.</p> <p>7 A. The answer is yes again.</p> <p>8 Q. It is false?</p> <p>9 A. Yes.</p> <p>10 Q. And number 6 is false too?</p> <p>11 A. That is correct.</p> <p>12 Q. And number 1 is false too?</p> <p>13 A. That's correct.</p> <p>14 Q. Is there anything in</p> <p>15 Respondents' Exhibit 1 that is true?</p> <p>16 A. Yes, I retained them.</p> <p>17 Q. That's it?</p> <p>18 A. That's it.</p> <p>19 Q. And you read an understood the</p> <p>20 agreement, but it was a false agreement</p> <p>21 you knew it to be false at the time you</p> <p>22 signed it?</p> <p>23 A. Again, I understood the</p> <p>24 agreement. I understood what's in the</p> <p>25 agreement. Again, Leeds & Morelli as well</p> <p style="text-align: right;">[Page 69]</p>

[18] (Pages 66 to 69)

<p>1 J. Vaughn</p> <p>2 as myself and everybody else who was</p> <p>3 involved in this were under different</p> <p>4 perceptions or different interpretations</p> <p>5 of what was going to happen with this</p> <p>6 particular situation.</p> <p>7 Now, what's on paper is one</p> <p>8 thing. That is the only thing right now</p> <p>9 we can sit here and say we know to be true</p> <p>10 that's what was put on paper. However,</p> <p>11 there were other things that went on that</p> <p>12 were discussed and totally a lot of this</p> <p>13 stuff is maybe past the limitations of</p> <p>14 even going into any further, but the fact</p> <p>15 of the matter is I'm telling you as well</p> <p>16 as everybody else in here that this may be</p> <p>17 a statement in truth, but it's not a true</p> <p>18 statement.</p> <p>19 Q. All I wanted from you was did</p> <p>20 you sign the document that you knew was</p> <p>21 false at the time?</p> <p>22 A. I answered that.</p> <p>23 Q. And you did that's what you</p> <p>24 did, right?</p> <p>25 A. Yes.</p> <p style="text-align: right;">[Page 70]</p>	<p>1 J. Vaughn</p> <p>2 more, but we don't have that in our</p> <p>3 paperwork here today but, yes, it was</p> <p>4 more.</p> <p>5 Q. It was more?</p> <p>6 A. Yes.</p> <p>7 Q. Let me take a look then. Let</p> <p>8 me mark as Respondents' Exhibit 2, a</p> <p>9 five-page document.</p> <p>10 (Respondents' Exhibit 2 a</p> <p>11 five-page document marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q. Can you identify Respondents'</p> <p>14 Exhibit 2 for me, Mr. Vaughn?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. This is a document stating</p> <p>18 what we were looking for in damages and</p> <p>19 basically my complaint to Prudential.</p> <p>20 Q. And do you see on page 3 where</p> <p>21 it says back pay damage estimated</p> <p>22 \$200,000?</p> <p>23 A. Yes.</p> <p>24 Q. Were they your estimated</p> <p>25 damages at the time?</p> <p style="text-align: right;">[Page 72]</p>
<p>1 J. Vaughn</p> <p>2 Q. Now, and you don't remember</p> <p>3 where you were when you signed this</p> <p>4 document?</p> <p>5 A. No.</p> <p>6 Q. Do you know who was present?</p> <p>7 A. No.</p> <p>8 Q. Now, no one from PSI was</p> <p>9 present when you signed this document?</p> <p>10 A. Absolutely not.</p> <p>11 Q. And PSI had absolutely nothing</p> <p>12 to do with your selection of counsel?</p> <p>13 A. No, they didn't have anything</p> <p>14 to do with it.</p> <p>15 Q. That was somebody you chose on</p> <p>16 your own?</p> <p>17 A. Yes.</p> <p>18 Q. Based on recommendation from</p> <p>19 Ms. Hernandez?</p> <p>20 A. That's correct.</p> <p>21 Q. You gave to Leeds & Morelli a</p> <p>22 calculation of your injuries and damages</p> <p>23 which you computered to equal \$200,000,</p> <p>24 correct?</p> <p>25 A. Actually it was computed to be</p> <p style="text-align: right;">[Page 71]</p>	<p>1 J. Vaughn</p> <p>2 A. These were estimated based on</p> <p>3 conversations that I had specifically</p> <p>4 with -- in the counsel at the time, but</p> <p>5 your answer is yes.</p> <p>6 Q. Did anybody ever tell you that</p> <p>7 your lawyer stood up in front of Judge</p> <p>8 Coate and said you had no damages on your</p> <p>9 underlying claims as opposed to your</p> <p>10 theory of the class action?</p> <p>11 A. No.</p> <p>12 Q. Nobody told you that?</p> <p>13 A. No.</p> <p>14 Q. So the first time you read the</p> <p>15 transcript of February 5, 2006 when Mr.</p> <p>16 Bortnick asked you to read it out loud, is</p> <p>17 the first time you saw that today?</p> <p>18 A. Yes.</p> <p>19 Q. So he hadn't shown you that</p> <p>20 before?</p> <p>21 A. I have seen it.</p> <p>22 Q. Turn to -- you have seen it?</p> <p>23 A. Yes.</p> <p>24 Q. Have you read it?</p> <p>25 A. Yes, I read it. You asked me</p> <p style="text-align: right;">[Page 73]</p>

[19] (Pages 70 to 73)

1 J. Vaughn
 2 is this the first time I have seen it, I
 3 said, no, I have seen it.
 4 Q. When did you see it?
 5 A. Whenever they mailed me a copy
 6 of everything that we have gone through
 7 thus far.
 8 Q. Okay. So turn to page 7 --
 9 A. Yes.
 10 Q. -- and if you will refer to
 11 line 11?
 12 A. Yes.
 13 Q. Could you read the sentence to
 14 the rest of paragraph beginning with "Mr.
 15 Vaughn"?
 16 A. "Mr. Vaughn, when he settled
 17 his original case with Prudential with
 18 Leeds & Morelli representing him, a piece
 19 of paper that said: I think these are my
 20 damages is a certain amount, and
 21 Prudential agreed to pay that certain
 22 amount to Mr. Vaughn less, of course, the
 23 contingency portion that went to Leeds
 24 Morelli & Brown."
 25 Q. And if you go to page 9, line
 [Page 74]

1 J. Vaughn
 2 3, after the words "Mr. Bortnick." Could
 3 you read the first paragraph there?
 4 A. "The court" --
 5 Q. No, after the words "Mr.
 6 Bortnick."
 7 A. "Mr. Vaughn did not have any
 8 intention to bring a one-on-one
 9 arbitration because he has a damages issue
 10 here and he understands that."
 11 Q. Do you know what Mr. Bortnick
 12 was talking about?
 13 A. I have to read the rest of
 14 this to understand that but, no, to answer
 15 the question, just reading that one
 16 sentence, no.
 17 Q. The fact is you submitted a
 18 claim in mediation for \$200,000; that's
 19 the claim you submitted in mediation,
 20 right?
 21 A. No.
 22 Q. You submitted a larger claim
 23 in mediation?
 24 A. We went to mediation I don't
 25 recall ever submitting any numbers to
 [Page 75]

1 J. Vaughn
 2 mediation. I do recall showing up at
 3 mediation and based on what I had to say
 4 they were going to assess what amount
 5 would be what they would consider a
 6 settlement.
 7 Q. And that amount just happened
 8 to coincide with your estimate of what
 9 your actual damages were?
 10 A. Yes.
 11 Q. And you got the \$200,000,
 12 right?
 13 A. Yes.
 14 Q. And you got the Cobra payments
 15 on your behalf for six months, right?
 16 A. I don't recall.
 17 Q. You don't remember --
 18 A. I don't recall.
 19 Q. -- whether you got that
 20 benefit out of the contract?
 21 A. I don't recall.
 22 Q. But you got those things
 23 without having to go to court, right?
 24 A. Yes.
 25 Q. So you got what you asked for
 [Page 76]

1 J. Vaughn
 2 without having to go to court and without
 3 having a hearing like this, nobody was
 4 cross examining you, were they?
 5 A. No.
 6 Q. And there were no judges
 7 there?
 8 A. No.
 9 Q. No juries there?
 10 A. Not that I recall.
 11 Q. And you got 100 percent of
 12 what you asked for?
 13 A. Yes.
 14 Q. And you were asserting an
 15 individual claim, a claim unique to you,
 16 correct?
 17 A. Correct.
 18 Q. Not on behalf of a class, if
 19 you will, right?
 20 A. That's correct.
 21 Q. What is a class action?
 22 A. A class action is a group of
 23 people coming together for one specific
 24 issue for a common cause that would be a
 25 class action in my view.
 [Page 77]

[20] (Pages 74 to 77)

1 J. Vaughn
2 Q. Did you know what a class
3 action was back in 1998?
4 A. Again, that's probably I would
5 have thought the same thing.
6 Q. Now, are you being paid to be
7 a plaintiff in this action?
8 A. No, I'm not.
9 Q. When is the first time the
10 thought occurred to you to file a class
11 action against my client and others?
12 A. When I realized that from what
13 I believed is that the actual agreement
14 that I signed was when I found out they
15 had a relationship with Prudential for
16 whatever reasons, and that wasn't made
17 known to me under confidentiality I would
18 think of your client, then I thought at
19 that point, hey, Prudential paying you and
20 you are taking money from me. I think
21 that there's something wrong with this,
22 and that's when I decided to pursue it.
23 Q. I asked you one question and I
24 said "when" not what, "when"?
25 A. I don't remember.

[Page 78]

1 J. Vaughn
2 Q. Was it --
3 MR. BORTNICK: I will object
4 in terms of the tone here from Mr.
5 Harper. If he can ask the same
6 question without the tone.
7 THE CHAIRMAN: It is cross.
8 Q. All I asked you is when?
9 A. I don't remember.
10 Q. You don't remember?
11 A. No.
12 Q. Was it in 1999?
13 A. I don't remember.
14 Q. So it could have been 1999?
15 A. No, I don't remember. I don't
16 recall.
17 Q. You don't recall?
18 A. No.
19 Q. Do you recall how long it was
20 before you commenced the class action?
21 A. It would have had to have been
22 after 2004.
23 Q. After 2004?
24 A. Yes.
25 Q. So 2005?

[Page 79]

1 J. Vaughn
2 A. Yes.
3 Q. That is when the thought first
4 occurred to you?
5 A. Yes.
6 Q. And yet you filed a class
7 action in October of 2004?
8 A. Okay. Well, I could be off
9 but it had to be after 2004 or about
10 around 2004.
11 Q. So it wasn't after 2004 it was
12 in 2004?
13 A. Okay.
14 Q. How long before you filed a
15 class action?
16 A. I don't remember. I don't
17 remember.
18 Q. Now, whose idea was it to file
19 a class action?
20 A. Whose idea?
21 MR. BORTNICK: I will object
22 to the extent that if Mr. Vaughn had
23 an attorney at the time that he
24 should not reveal the substance of
25 the attorney-client communications.

[Page 80]

1 J. Vaughn
2 THE CHAIRMAN: Fine.
3 MR. BORTNICK: I wasn't Mr.
4 Vaughn's counsel at the time. But
5 if he had other counsel.
6 Q. Whose idea was it?
7 A. Again, when this was brought
8 to my attention?
9 Q. By whom?
10 A. By Connie Hernandez.
11 Q. Connie Hernandez brought it to
12 your attention?
13 A. Yes. Then I decided to go
14 forward with it. When that time was I
15 don't recall. It had to be somewhere
16 around 2004, and my reason for saying that
17 is because prior to that I spent from 2000
18 to 2003 working in Atlanta for Citigroup.
19 So when I got back up here is when this
20 all surfaced.
21 A. Who do you work for now?
22 A. I work for Bloomberg.
23 Q. What did Mr. Hernandez say to
24 you and you say to her?
25 A. I don't remember the exact

[Page 81]

[21] (Pages 78 to 81)

1 J. Vaughn
 2 conversation.
 3 Q. Did she mention a lawyer's
 4 name?
 5 A. She mentioned Angela Roper,
 6 yes.
 7 Q. And did you call Angela Roper
 8 or did she call you?
 9 A. I called her.
 10 Q. And had Ms. Hernandez retained
 11 Ms. Roper?
 12 A. I don't know.
 13 Q. And you have no recollection
 14 whatsoever what Ms. Hernandez said to you
 15 in prompting you to make a call to Ms.
 16 Roper?
 17 A. No?
 18 Q. Who is Ms. Roper?
 19 A. My other attorney.
 20 Q. Mr. Thyne's partner?
 21 A. Yes.
 22 Q. Now, let's go to the
 23 settlement agreement?
 24 A. Yes.
 25 Q. Between the time Mr. Hernandez
 [Page 82]

1 J. Vaughn
 2 spoke to you in about 2004 and the --
 3 between the time you signed your
 4 settlement agreement in October 1998 and
 5 when you spoke to Mr. Hernandez at some
 6 point, had you ever expressed unhappiness
 7 about your settlement agreement with
 8 Prudential?
 9 A. Yeah.
 10 Q. To whom?
 11 A. I mean it was just to family
 12 and friends for the most part, nobody
 13 legally.
 14 Q. Did you ever complain to Leeds
 15 & Morelli?
 16 A. No.
 17 Q. Did you ever complain to PSI?
 18 A. No.
 19 Q. So other than family or
 20 friends -- what members of your family?
 21 A. I don't remember it was just
 22 family, just friends.
 23 Q. Your wife?
 24 A. It wasn't my wife at the time.
 25 Q. Do you remember any of the
 [Page 83]

1 J. Vaughn
 2 friends you mentioned it to?
 3 A. No.
 4 Q. How about Ms. Hernandez?
 5 A. Ms. Hernandez is a very good
 6 friend.
 7 Q. You mentioned to her you were
 8 unhappy that you got 100 percent of what
 9 you asked for in the PSI settlement?
 10 A. Again, some of the things that
 11 we are talking about here are not stated
 12 in this because these were things that,
 13 number one, were either too old to talk
 14 about or they are not on paper.
 15 The things that I was unhappy
 16 with, if I must go into detail about them,
 17 was Leeds & Morelli told me that, hey, you
 18 would be getting when you --
 19 MR. HARPER: I have to
 20 interrupt the witness, this is
 21 cross-examination.
 22 MR. BORTNICK: The question
 23 was, what were different --
 24 THE CHAIRMAN: Hold on, one
 25 at a time.
 [Page 84]

1 J. Vaughn
 2 MR. HARPER: If you read it
 3 back the question is what did you
 4 say to Ms. Hernandez.
 5 THE CHAIRMAN: Read it back.
 6 (A portion of the record was
 7 read.)
 8 THE CHAIRMAN: Let me say one
 9 thing. Mr. Vaughn, do not make any
 10 assumptions that something is too
 11 old for us to hear. If counsel has
 12 some objection based on time to what
 13 you are going to say they will make
 14 it, but don't make that assumption
 15 yourself. Don't screen yourself
 16 from saying something you think is
 17 irrelevant. Okay.
 18 THE WITNESS: Fine.
 19 Q. Yes or no?
 20 A. It is not yes or no. I did
 21 not mention to her that I was content that
 22 I got 100 or upset I got 100 percent. It
 23 was not 100 percent. 100 percent would
 24 have been the job working for DOW, which
 25 was Discrimination on Wall Street, which
 [Page 85]

[22] (Pages 82 to 85)

<p>1 J. Vaughn</p> <p>2 is a company that Leeds & Morelli as well</p> <p>3 as the people at Prudential had put</p> <p>4 together for this purpose.</p> <p>5 MS. LEWIS: Objection.</p> <p>6 A. On top of that, which I have</p> <p>7 documentation for and I don't have it with</p> <p>8 us, but they also said that, hey, Jeff,</p> <p>9 you are going to get out of this deal you</p> <p>10 will get \$200,000 you will have a job</p> <p>11 working with DOW and you will get</p> <p>12 long-term disability. And I was going to</p> <p>13 their counselors for the purpose of this</p> <p>14 disability which never took place -- which</p> <p>15 never took place as well as they took 1</p> <p>16 percent of what -- or something along</p> <p>17 those lines of the what I settled for for</p> <p>18 purposes of DOW.</p> <p>19 So in other words I was buying</p> <p>20 into the company so I would have a job and</p> <p>21 work for and none of that existed. Again,</p> <p>22 this is not on paper, this is something</p> <p>23 that we agreed upon and these are things</p> <p>24 that can be shown.</p> <p>25 MS. LEWIS: Can I note my</p> <p style="text-align: right;">[Page 86]</p>	<p>1 J. Vaughn</p> <p>2 quote what Mr. Vaughn's intentions</p> <p>3 were at the signing of the</p> <p>4 settlement agreement, that's the</p> <p>5 sole issue I agree with her and</p> <p>6 whether this DOW was right or wrong</p> <p>7 or whatever is not part of this</p> <p>8 hearing.</p> <p>9 MS. LEWIS: Respectfully,</p> <p>10 part of the problem here was this</p> <p>11 door was opened on direct when Mr.</p> <p>12 Bortnick went well beyond, this is</p> <p>13 the agreement did you sign it, did</p> <p>14 you mean to sign it. So he asked</p> <p>15 about his qualifications and</p> <p>16 experience and Mr. Harper</p> <p>17 understandably is trying to follow</p> <p>18 up on it, but at some point when we</p> <p>19 start getting to the full measure of</p> <p>20 the claims we have to object.</p> <p>21 MR. HARPER: I actually would</p> <p>22 only say that Mr. Vaughn can talk</p> <p>23 all he wants, but I think it all</p> <p>24 should be stricken. I think he is</p> <p>25 not answering the exact question</p> <p style="text-align: right;">[Page 88]</p>
<p>1 J. Vaughn</p> <p>2 objection for the record. We have</p> <p>3 been told time and again by every</p> <p>4 counsel here that we were not going</p> <p>5 into the merits of these claims, all</p> <p>6 of which Leeds & Morelli denies.</p> <p>7 And this testimony regarding DOW or</p> <p>8 promises by Leeds & Morelli is not</p> <p>9 only -- there's documents that exist</p> <p>10 that aren't here. I mean this has</p> <p>11 no relevancy. Even if it could be</p> <p>12 proved to what is being discussed</p> <p>13 here regarding the intentions of Mr.</p> <p>14 Vaughn regarding when he signed the</p> <p>15 agreement that said he will</p> <p>16 arbitrate the claim.</p> <p>17 MR. BORTNICK: I want to</p> <p>18 largely agree what we said, but what</p> <p>19 can be proved, certainly not today,</p> <p>20 but I certainly agree with what this</p> <p>21 hearing was about, it was elicited</p> <p>22 on cross-examination. So I didn't</p> <p>23 think it was my place to object, but</p> <p>24 I do agree this is about what, as</p> <p>25 she said, I think almost a direct</p> <p style="text-align: right;">[Page 87]</p>	<p>1 J. Vaughn</p> <p>2 that I ask and on cross-examination</p> <p>3 I would ask for instruction that he</p> <p>4 listen to the question I ask and</p> <p>5 answer only that question because if</p> <p>6 you look at the questions I'm asking</p> <p>7 as opposed to the answers I'm</p> <p>8 getting, they all go to whatever</p> <p>9 issue Mr. Bortnick and Ms. Lewis</p> <p>10 think are an issue here.</p> <p>11 THE CHAIRMAN: Ms. Lewis'</p> <p>12 objection is overruled. Mr. Vaughn</p> <p>13 is to answer the question. However,</p> <p>14 there's no reason why Mr. Vaughn has</p> <p>15 to accept your characterization of</p> <p>16 something that happened, if he</p> <p>17 disagrees with it, if there is an</p> <p>18 assumption built into your question</p> <p>19 and he does not accept that</p> <p>20 assumption, he can make that known.</p> <p>21 MR. HARPER: Fair point.</p> <p>22 Q. By the way, you just talked</p> <p>23 about all these promises that were made to</p> <p>24 you that aren't on paper, none of them</p> <p>25 were made by Prudential, correct?</p> <p style="text-align: right;">[Page 89]</p>

<p>1 J. Vaughn</p> <p>2 A. Correct.</p> <p>3 Q. Let's go to the settlement</p> <p>4 agreement.</p> <p>5 A. Yes.</p> <p>6 Q. And start with paragraph 16</p> <p>7 because I want to go over it with you</p> <p>8 carefully.</p> <p>9 A. Yes.</p> <p>10 Q. Let's take it one sentence at</p> <p>11 a time, Mr. Vaughn --</p> <p>12 A. Yes.</p> <p>13 Q. -- paragraph 16.</p> <p>14 A. Yes.</p> <p>15 Q. "Voluntary execution," let's</p> <p>16 read the first sentence out loud.</p> <p>17 A. "Vaughn acknowledges that he</p> <p>18 has carefully read this agreement and</p> <p>19 understands all of its terms including the</p> <p>20 full and final release of claims set forth</p> <p>21 above.</p> <p>22 Q. Is there anything in that</p> <p>23 sentence that you do not understand?</p> <p>24 A. No.</p> <p>25 Q. Is there anything in that</p> <p style="text-align: right;">[Page 90]</p>	<p>1 J. Vaughn</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. The next phrase.</p> <p>5 A. "That he has not relied upon</p> <p>6 any representation or statement written or</p> <p>7 oral not set forth in this agreement."</p> <p>8 Q. Is there anything about that</p> <p>9 sentence that you do not understand?</p> <p>10 A. Pretty much the whole thing.</p> <p>11 Q. You don't understand any of</p> <p>12 it?</p> <p>13 A. No.</p> <p>14 Q. And what word don't you</p> <p>15 understand?</p> <p>16 A. Anything that I just read in</p> <p>17 that sentence there I do not understand.</p> <p>18 Q. Do you understand what the</p> <p>19 word "relied" means?</p> <p>20 A. Yes.</p> <p>21 Q. What does it mean?</p> <p>22 A. Depended upon.</p> <p>23 Q. Do you understand what the</p> <p>24 word "representation of statement" means?</p> <p>25 A. Yes.</p> <p style="text-align: right;">[Page 92]</p>
<p>1 J. Vaughn</p> <p>2 sentence that you did not understand at</p> <p>3 the time?</p> <p>4 A. No.</p> <p>5 Q. Is there anything in that</p> <p>6 sentence that was false at the time you</p> <p>7 signed the agreement?</p> <p>8 A. No.</p> <p>9 Q. Let's do the second sentence,</p> <p>10 and this is a little longer one, so maybe</p> <p>11 we will break it down by semicolons. But</p> <p>12 let's read the first part of the sentence</p> <p>13 up to the first semicolon.</p> <p>14 A. "Vaughn further acknowledge</p> <p>15 that he has voluntarily entered into this</p> <p>16 agreement."</p> <p>17 Q. Is there anything about that</p> <p>18 phrase you do not understand?</p> <p>19 A. No.</p> <p>20 Q. And you understood it clearly</p> <p>21 at the time you signed the agreement,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that statement is true</p> <p>25 when you went into the agreement; is that</p> <p style="text-align: right;">[Page 91]</p>	<p>1 J. Vaughn</p> <p>2 Q. What does it mean?</p> <p>3 A. Representation of someone who</p> <p>4 is being represented.</p> <p>5 Q. A fact or statement?</p> <p>6 A. Yes.</p> <p>7 Q. "Written or oral," do you</p> <p>8 understand those words?</p> <p>9 A. Yes.</p> <p>10 Q. And "not set forth in this</p> <p>11 agreement"?</p> <p>12 A. That I don't understand.</p> <p>13 Q. So let's break it down that</p> <p>14 you have not depended upon any statement</p> <p>15 of the fact whether in writing or oral</p> <p>16 that isn't in the agreement?</p> <p>17 A. No.</p> <p>18 Q. No, what does it mean?</p> <p>19 A. Well, because you said it says</p> <p>20 here: Any representation or statement</p> <p>21 written or oral, what is meant by oral?</p> <p>22 Q. You tell me. Do you</p> <p>23 understand what the word "oral" means?</p> <p>24 A. I know what the word "oral"</p> <p>25 means as it pertains to this statement.</p> <p style="text-align: right;">[Page 93]</p>

[24] (Pages 90 to 93)

<p>1 J. Vaughn</p> <p>2 Q. What does the word "oral"</p> <p>3 mean?</p> <p>4 A. I'm asking you.</p> <p>5 Q. One of the good things and bad</p> <p>6 things about being a lawyer is that I get</p> <p>7 to ask the questions. So what does the</p> <p>8 word "oral" mean to you in everyday life?</p> <p>9 A. Verbal.</p> <p>10 Q. In other words not written</p> <p>11 down but talked?</p> <p>12 A. Yes.</p> <p>13 Q. So we understand what the word</p> <p>14 "oral" means?</p> <p>15 A. Exactly.</p> <p>16 Q. So now tell me what in this</p> <p>17 sentence fragment you do not understand?</p> <p>18 A. I don't understand again where</p> <p>19 it says: That he has not -- that he has</p> <p>20 not relied upon any representation or</p> <p>21 statement written or oral not set forth in</p> <p>22 this agreement.</p> <p>23 There were things that were</p> <p>24 said orally that are not in this</p> <p>25 agreement.</p> <p style="text-align: right;">[Page 94]</p>	<p>1 J. Vaughn</p> <p>2 minutes ago that it was accurate and true,</p> <p>3 that you had carefully read and understood</p> <p>4 all the terms of the contract and now you</p> <p>5 are telling me two fragments later that</p> <p>6 you didn't understand what that fragment</p> <p>7 meant.</p> <p>8 A. I'm telling you two fragments</p> <p>9 later that I did not understand all of the</p> <p>10 terms. I understood what the contract</p> <p>11 represented, I did not all of the terms in</p> <p>12 the contract is what I'm saying.</p> <p>13 Q. Read the next sentence</p> <p>14 fragment.</p> <p>15 A. "That the only consideration</p> <p>16 for signing this agreement is as set forth</p> <p>17 herein."</p> <p>18 Q. Do you know what that means?</p> <p>19 A. No.</p> <p>20 Q. Do you know what</p> <p>21 "consideration" is in a contract?</p> <p>22 A. Yes, I know what consideration</p> <p>23 is.</p> <p>24 Q. What is it?</p> <p>25 A. (No response.)</p> <p style="text-align: right;">[Page 96]</p>
<p>1 J. Vaughn</p> <p>2 Q. On which you relied?</p> <p>3 A. Yes.</p> <p>4 Q. But you just told me that the</p> <p>5 first sentence was true and that you</p> <p>6 understood it to be true at the time,</p> <p>7 which is that you understood all of its</p> <p>8 terms?</p> <p>9 A. I'm not going to say I</p> <p>10 understood all of its terms.</p> <p>11 Q. You are changing the testimony</p> <p>12 you gave me five minutes ago?</p> <p>13 A. I'm not changing my testimony,</p> <p>14 I'm telling you I did not understand all</p> <p>15 of the terms included in this. I'm not a</p> <p>16 lawyer.</p> <p>17 Q. But you said a few -- I</p> <p>18 understand you are not a lawyer, but you</p> <p>19 signed a contract.</p> <p>20 A. I understand.</p> <p>21 Q. And you are trying against</p> <p>22 Prudential to get around the contract, and</p> <p>23 I'm trying to focus on the promises you</p> <p>24 made to my client when you signed the</p> <p>25 contract. And you told me not five</p> <p style="text-align: right;">[Page 95]</p>	<p>1 J. Vaughn</p> <p>2 Q. Let me help you. Is it fair</p> <p>3 to say that your understanding of the word</p> <p>4 "consideration" is the promises that</p> <p>5 Vaughn makes to PSI and the promises that</p> <p>6 PSI makes to Vaughn in a contract that is</p> <p>7 consideration and exchange of</p> <p>8 consideration?</p> <p>9 A. I can see that, but that's not</p> <p>10 what I would interpret it as.</p> <p>11 Q. You tell me what you interpret</p> <p>12 it as.</p> <p>13 A. I don't understand this the</p> <p>14 way it is being represented here.</p> <p>15 Q. I thought you just told me you</p> <p>16 knew what consideration is?</p> <p>17 A. Again, you are going to ask me</p> <p>18 about a word or are you going to ask me</p> <p>19 about a message fragment.</p> <p>20 Q. Consideration in the context</p> <p>21 of this agreement; do you know what it</p> <p>22 means?</p> <p>23 A. No.</p> <p>24 Q. So that's another sentence</p> <p>25 that you acknowledge that you don't</p> <p style="text-align: right;">[Page 97]</p>

[25] (Pages 94 to 97)

<p>1 J. Vaughn</p> <p>2 understand the terms?</p> <p>3 A. Right.</p> <p>4 Q. Even though you told me you</p> <p>5 did understand all the terms?</p> <p>6 A. Again, I understand what or</p> <p>7 understood what the contract represented.</p> <p>8 I did not understand all of the terms in</p> <p>9 the contract.</p> <p>10 Q. What did this contract, this</p> <p>11 contract, the written contract, what did</p> <p>12 it represent?</p> <p>13 A. What it represented to me was</p> <p>14 that Prudential -- I have agreed to settle</p> <p>15 with Prudential on X amount of dollars,</p> <p>16 and that was it, that's what that means to</p> <p>17 me.</p> <p>18 Q. Did you give anything to</p> <p>19 Prudential for that \$200,000?</p> <p>20 A. What do you mean did I give</p> <p>21 anything to them.</p> <p>22 Q. Did you make any promises to</p> <p>23 Prudential?</p> <p>24 A. That the only thing that I</p> <p>25 promised was that it wouldn't be something</p> <p style="text-align: right;">[Page 98]</p>	<p>1 J. Vaughn</p> <p>2 made to PSI in this agreement? You gave</p> <p>3 PSI a release from all claims and causes</p> <p>4 of action; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And yet having released all</p> <p>7 those claims you are bringing a new one?</p> <p>8 A. Yes.</p> <p>9 Q. And if you go down and it</p> <p>10 says: "That the release covers any claims</p> <p>11 that you ever had or may hereafter have,</p> <p>12 whether known or unknown" -- this is the</p> <p>13 last line -- "suspected or unsuspected up</p> <p>14 to and including the date of this</p> <p>15 agreement." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Is there anything in there you</p> <p>18 don't understand?</p> <p>19 A. I pretty much understand that.</p> <p>20 Q. And then on the top of page 2</p> <p>21 it says: Vaughn further agrees, promises</p> <p>22 and covenant, that to the maximum extent</p> <p>23 permitted by law neither he" that means</p> <p>24 you "for any person organization or other</p> <p>25 entity acting on his behalf, has or will</p> <p style="text-align: right;">[Page 100]</p>
<p>1 J. Vaughn</p> <p>2 that would go to the news.</p> <p>3 Q. That's it?</p> <p>4 A. That was it.</p> <p>5 Q. All right. Well, let's go</p> <p>6 back to the first page of the contract --</p> <p>7 A. Yes.</p> <p>8 Q. -- of the settlement</p> <p>9 agreement.</p> <p>10 A. Yes.</p> <p>11 Q. And in paragraph 4 it reads:</p> <p>12 "Vaughn hereby releases and</p> <p>13 discharges PSI, its parents, divisions,</p> <p>14 subsidiaries and affiliations and their</p> <p>15 current and former directors, officers,</p> <p>16 shareholders, agents and employees and</p> <p>17 each of their predecessors, successors and</p> <p>18 assigns, hereinafter the company, from any</p> <p>19 and all claims and causes of action except</p> <p>20 for the benefits specifically set forth in</p> <p>21 this agreement arising out of or relating</p> <p>22 to Vaughn's employment or separation from</p> <p>23 employment." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Isn't that a promise that you</p> <p style="text-align: right;">[Page 99]</p>	<p>1 J. Vaughn</p> <p>2 file, charge, claim, sue or cause to be or</p> <p>3 permit to be filed, charge or claim any</p> <p>4 actions for damages or other relief -- "</p> <p>5 do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. -- "against the company" --</p> <p>8 A. Yes.</p> <p>9 Q. -- "involving any matter</p> <p>10 occurring in the past up to the date of</p> <p>11 this agreement." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is there anything there you</p> <p>14 don't understand?</p> <p>15 A. I understand it.</p> <p>16 Q. You understand that was</p> <p>17 something else you gave to PSI, you</p> <p>18 promised not to sue PSI, right?</p> <p>19 A. Yes.</p> <p>20 Q. And you did sue PSI again?</p> <p>21 MR. BORTNICK: I will</p> <p>22 object. The basis of the lawsuit</p> <p>23 which is on a well-recognized</p> <p>24 exception to a release is not an</p> <p>25 issue here. The claim in that being</p> <p style="text-align: right;">[Page 101]</p>

[26] (Pages 98 to 101)

1 J. Vaughn
2 there is a collusion between his
3 attorneys and Prudential, that would
4 void a release if --
5 THE CHAIRMAN: If proven true.
6 MR. BORTNICK: That is not
7 here for today, but he is asking him
8 about these issues and trying to
9 make it seem as if he can't even sue
10 them in the first place which is not
11 true.
12 MR. HARPER: I don't
13 understand the objection, so I will
14 continue with my examination.
15 THE CHAIRMAN: Fine.
16 Q. Then down on paragraph 9 it
17 says: "Non disparagement. Vaughn
18 represents that he has not and agrees that
19 he will not in any way disparage PSI." Do
20 you see that?
21 A. Yes.
22 Q. Do you understand it?
23 A. Yes.
24 Q. But in fact you have
25 disparaged PSI, correct?

[Page 102]

1 J. Vaughn
2 A. I don't know, have I?
3 Q. Well, you sued them, right?
4 A. No.
5 Q. You haven't sued us?
6 A. No.
7 Q. What are we doing here?
8 A. Again, we are here to see if
9 this is -- if I can -- if I had any
10 knowledge that I could not bring a class
11 action suit against Prudential and the
12 answer to that is no.
13 However, have I sued
14 Prudential right now, this is we are here
15 to see if that's possible. Do you
16 understand what I'm saying?
17 Q. I do. I hope you understand
18 that I believe you made lots of promises
19 to PSI that you've broken in this
20 agreement including the one that says that
21 you will not disclose directly or
22 indirectly except to legal advisors if
23 circumstances underlying this agreement
24 which you publicly filed a lawsuit,
25 correct?

[Page 103]

1 J. Vaughn
2 A. Yes.
3 Q. So you breached that too,
4 right?
5 A. Yes.
6 Q. And then you also said or
7 promised that any claim or controversy
8 arising out of or related to this
9 agreement or interpretation thereof will
10 be settled by arbitration. That is in
11 paragraph --
12 MR. BORTNICK: I want to
13 object.
14 A. I think you need to say it,
15 how it says --
16 Q. Under the then prevailing
17 constitution rules of the New York State
18 Stock Exchange Inc. or the National
19 Association of Securities Dealers Inc. Do
20 you see that?
21 A. Yes.
22 Q. You made that promise too?
23 A. Correct.
24 Q. Now, you still have my
25 \$200,000?

[Page 104]

1 J. Vaughn
2 A. Are you trying to be funny?
3 Q. No.
4 A. What does that have to do with
5 why we are here?
6 Q. What it has to do with, I gave
7 you \$200,000 or that is to say PSI did.
8 THE CHAIRMAN: Ask a question
9 only.
10 Q. PSI gave you the \$200,000, is
11 that correct?
12 A. Correct.
13 Q. You still have it?
14 A. That's not here or there.
15 Q. Yes or no?
16 THE CHAIRMAN: Answer the
17 question.
18 MR. BORTNICK: I have an
19 objection. We are not talking about
20 this is not about a rescission
21 proceeding. He is asking about
22 rescission and about whether this
23 agreement should be rescinded. We
24 paid you \$200,000, you give it back
25 to us.

[Page 105]

[27] (Pages 102 to 105)

1 J. Vaughn	1 J. Vaughn
2 Recission has nothing to	2 any and all costs incurred in connection
3 what we are here for today. Of	3 with any such recovery including
4 course, Mr. Vaughn cashed the check	4 reasonable attorneys' fees.
5 or part of the check he got. That	5 Do you understand the meaning
6 is not the issue.	6 of that phrase?
7 THE CHAIRMAN: Do you want to	7 A. Yes.
8 respond to the objection?	8 Q. In paragraph 14 of the
9 MR. HARPER: I'm asking him a	9 settlement agreement where it says: "Any
10 question and it goes to the heart.	10 claim or controversy arising out or
11 THE CHAIRMAN: He objected to	11 related to the agreement the interpretation
12 it and he's given his reasons for	12 thereof," it doesn't say except class
13 objecting. I want to know whether	13 actions, right?
14 you wanted to respond.	14 A. No, it doesn't.
15 MR. HARPER: I'm not talking	15 Q. You knew what a class action
16 about recission or anything else.	16 was in October of 1998, correct?
17 I'm here because this gentleman is	17 A. Yeah.
18 saying he didn't understand what he	18 MR. HARPER: I pass the
19 was doing when he signed the	19 witness.
20 agreement. And you have heard the	20 THE CHAIRMAN: Off the
21 testimony, and I'm going to leave it	21 record.
22 for the most part as it is that he	22 (Discussion off the record.)
23 understands one minute and doesn't	23 THE CHAIRMAN: You may
24 understand it the next.	24 proceed.
25 THE CHAIRMAN: So you are	25 MS. LEWIS: Thank you.
[Page 106]	[Page 108]
1 J. Vaughn	1 J. Vaughn
2 saying this question is appropriate	2 EXAMINATION BY
3 because --	3 MS. LEWIS:
4 MR. HARPER: This question is	4 Q. Mr. Vaughn, when you settled
5 appropriate because if he is going	5 your claim you were aware you were not
6 to walk away from the promises he	6 settling it in any court proceeding; isn't
7 made to me, I want the \$200,000	7 that correct.
8 back. I'm wondering why if this	8 A. That's correct.
9 agreement is so meaningless to him	9 Q. And you were aware that by
10 he hasn't given me the money back.	10 settling it, you were agreeing to give up
11 MR. BORTNICK: That's a	11 the right to go to court regarding a
12 statement. I want my money back is	12 claim; isn't that correct?
13 not the question.	13 A. Yes.
14 MR. HARPER: The question is:	14 Q. And in fact when you went
15 Q. Have you kept the money?	15 through the mediation process before the
16 A. Yes.	16 mediators where you argued in favor of
17 THE CHAIRMAN: Objection is	17 your claim, you knew that was in lieu of
18 overruled.	18 going to court; didn't you?
19 A. Yes.	19 A. Yes.
20 Q. And finally let me go to	20 Q. There was never a point in
21 paragraph 15, and read: "Vaughn agrees in	21 time when you went to the mediators and
22 the event of finding of a breach of the	22 you said, well, if I don't like what you
23 agreement, he will forfeit to PSI all	23 say then I can still file in federal
24 amounts received pursuant to this	24 court; did you?
25 agreement, and he shall indemnify PSI for	25 A. No, I didn't say that.
[Page 107]	[Page 109]

[28] (Pages 106 to 109)

<p>1 J. Vaughn</p> <p>2 Q. And you knew that by going to</p> <p>3 the mediators to present your claim you</p> <p>4 weren't going to have a jury trial either;</p> <p>5 is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And I would like to direct</p> <p>8 your attention back to the settlement</p> <p>9 agreement.</p> <p>10 A. Yes.</p> <p>11 Q. Did anyone other than you and</p> <p>12 a representative of the Prudential sign</p> <p>13 the agreement?</p> <p>14 A. No.</p> <p>15 Q. There were other people making</p> <p>16 claims against Prudential; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. This only settled your claim?</p> <p>20 A. Yes, that's correct.</p> <p>21 Q. Did you have to get permission</p> <p>22 from any of the other claimants to settle</p> <p>23 your claim?</p> <p>24 A. No.</p> <p>25 Q. Did they have a vote because</p> <p style="text-align: right;">[Page 110]</p>	<p>1 J. Vaughn</p> <p>2 is that Mr. Vaughn independently</p> <p>3 went into a private agreement</p> <p>4 between Mr. Vaughn and Prudential</p> <p>5 and nobody else participated in it.</p> <p>6 And this is further evidence of the</p> <p>7 fact that the class action is an</p> <p>8 after-the-fact creation that has</p> <p>9 nothing to do with the private</p> <p>10 settlement agreement.</p> <p>11 MR. BORTNICK: If I had gone</p> <p>12 out and bought a share of World Com</p> <p>13 that was my private decision perhaps</p> <p>14 with my broker to buy a share of</p> <p>15 World Com. It is totally irrelevant</p> <p>16 as to whether I'm going to be either</p> <p>17 a class member or a class</p> <p>18 representative of a lawsuit against</p> <p>19 World Com or a class action against</p> <p>20 World Com which had been ongoing.</p> <p>21 I mean there is no relevance.</p> <p>22 It is like saying the sky is blue so</p> <p>23 you can't file a class action or you</p> <p>24 can file a class action. It is a</p> <p>25 disconnected idea.</p> <p style="text-align: right;">[Page 112]</p>
<p>1 J. Vaughn</p> <p>2 it was going to affect their claim one way</p> <p>3 or another as to whether or not you settle</p> <p>4 your claim?</p> <p>5 MR. BORTNICK: I will</p> <p>6 object. I don't see any relevancy</p> <p>7 even to what has been on direct or</p> <p>8 cross or what has been brought up.</p> <p>9 MS. LEWIS: This would be my</p> <p>10 cross. So I don't have to follow on</p> <p>11 his cross, but the claim is that Mr.</p> <p>12 Vaughn has the right to proceed in a</p> <p>13 class action and that he can</p> <p>14 eviscerate his individual process</p> <p>15 because he wants to go in a group</p> <p>16 and I think the group participation</p> <p>17 in his settlement and whether or not</p> <p>18 this is a one-on-one settlement or</p> <p>19 something that somebody else</p> <p>20 participated in because all of these</p> <p>21 claims about 50 other people in the</p> <p>22 works is very relevant.</p> <p>23 THE CHAIRMAN: And the</p> <p>24 relevance is?</p> <p>25 MS. LEWIS: And the relevance</p> <p style="text-align: right;">[Page 111]</p>	<p>1 J. Vaughn</p> <p>2 THE CHAIRMAN: The objection</p> <p>3 is overruled.</p> <p>4 MS. LEWIS: Read back</p> <p>5 question.</p> <p>6 (A portion of the record was</p> <p>7 read.)</p> <p>8 A. No.</p> <p>9 Q. Now in paragraph 14 it says,</p> <p>10 does it not: "Any claim or controversy</p> <p>11 arising out of or related to this</p> <p>12 agreement"? I want to stop there.</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand the words</p> <p>15 "any claim or controversy"?</p> <p>16 A. Yes.</p> <p>17 Q. "Will be or the interpretation</p> <p>18 thereof will be settled by an</p> <p>19 arbitration."</p> <p>20 Do you understand what that</p> <p>21 means will be settled by arbitration?</p> <p>22 A. Yes.</p> <p>23 Q. And then it goes on to say:</p> <p>24 "Under the prevailing</p> <p>25 constitution rules of New York State Stock</p> <p style="text-align: right;">[Page 113]</p>

[29] (Pages 110 to 113)

<p>1 J. Vaughn</p> <p>2 Exchange or National Association of</p> <p>3 Security Dealers Inc." you understood</p> <p>4 those would be the rules you would be</p> <p>5 proceeding on for an arbitration; is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask about what those</p> <p>9 rules were going to be?</p> <p>10 A. No.</p> <p>11 Q. Did you ask whether or not you</p> <p>12 would be be entitled to bring a class</p> <p>13 action?</p> <p>14 A. No.</p> <p>15 Q. Did it matter to you one way</p> <p>16 or the other in deciding to accept</p> <p>17 \$200,000 whether or not you would still be</p> <p>18 entitled to bring a class action?</p> <p>19 A. No.</p> <p>20 Q. Did you understand that there</p> <p>21 was any exception to the phrase, "any</p> <p>22 claim or controversy" that would be</p> <p>23 brought under the arbitration?</p> <p>24 A. No.</p> <p>25 Q. Did you ask if there was any</p> <p style="text-align: right;">[Page 114]</p>	<p>1 J. Vaughn</p> <p>2 A. It would have to be after</p> <p>3 Q. Was it before or after they</p> <p>4 paid you your Cobra?</p> <p>5 A. Again, Cobra is something</p> <p>6 nobody paid me any Cobra or anything like</p> <p>7 that. If it was in there it's in there.</p> <p>8 No one paid me Cobra or anything.</p> <p>9 Q. Nobody paid your Cobra?</p> <p>10 A. No.</p> <p>11 Q. Did you ever seek legal</p> <p>12 counsel asking someone to enforce the</p> <p>13 obligation in the settlement agreement</p> <p>14 regarding a payment of Cobra?</p> <p>15 A. No.</p> <p>16 Q. Is that something that you</p> <p>17 didn't pay attention to one way or the</p> <p>18 other?</p> <p>19 A. No.</p> <p>20 Q. In paragraph 16 --</p> <p>21 A. Yes.</p> <p>22 Q. -- towards the end of the</p> <p>23 paragraph it says: "Vaughn also</p> <p>24 acknowledges that he has been afforded at</p> <p>25 least 21 days to consider the release</p> <p style="text-align: right;">[Page 116]</p>
<p>1 J. Vaughn</p> <p>2 exception that you could still bring</p> <p>3 something in court?</p> <p>4 A. No.</p> <p>5 Q. When did you first decide that</p> <p>6 you wished to bring a class action?</p> <p>7 A. When I realized Prudential had</p> <p>8 a secret agreement with Leeds & Morelli --</p> <p>9 when I say secret because I knew nothing</p> <p>10 about it, and that they were being paid by</p> <p>11 Leeds & Morelli as well as by myself. So</p> <p>12 I looked at that as a reason.</p> <p>13 Q. When you say -- I asked you</p> <p>14 for when. So why are you telling me what</p> <p>15 was the basis that you think you have a</p> <p>16 claim. When did you determine that?</p> <p>17 MR. BORTNICK: I object to</p> <p>18 the question because the question</p> <p>19 was when, and his answer was when I</p> <p>20 realized.</p> <p>21 THE CHAIRMAN: That's fine.</p> <p>22 Q. What was the date?</p> <p>23 A. I don't recall.</p> <p>24 Q. Was it before or after you</p> <p>25 received full payment?</p> <p style="text-align: right;">[Page 115]</p>	<p>1 J. Vaughn</p> <p>2 provision contained herein." Was that</p> <p>3 true?</p> <p>4 A. I don't know, I guess, yeah.</p> <p>5 Q. You had 21 days to consider</p> <p>6 whether to release this claim in exchange</p> <p>7 for payment of \$200,000?</p> <p>8 A. Yes.</p> <p>9 Q. And you did that?</p> <p>10 A. Yes.</p> <p>11 Q. And after that 21 days you</p> <p>12 decided to go forward and release the</p> <p>13 claim against Prudential?</p> <p>14 A. This has been way beyond 21</p> <p>15 days, we are talking about years now.</p> <p>16 Q. It says in the contract --</p> <p>17 A. I understand that.</p> <p>18 Q. -- that you had 21 days to</p> <p>19 consider the release before you accepted</p> <p>20 it, and you took that time and decided you</p> <p>21 wanted to release this claim?</p> <p>22 A. Yes.</p> <p>23 Q. And in connection with that</p> <p>24 you had the terms of the settlement</p> <p>25 agreement?</p> <p style="text-align: right;">[Page 117]</p>

[30] (Pages 114 to 117)

1 J. Vaughn
 2 A. Yes.
 3 Q. And then it also says that you
 4 have seven days after signing this
 5 agreement to revoke it in writing.
 6 A. Yes.
 7 Q. Did you understand that at the
 8 time?
 9 A. Yes.
 10 Q. And during that seven-day time
 11 period, you had the settlement agreement
 12 in your possession; isn't that correct?
 13 A. Possibly.
 14 Q. Did you ask anybody for it?
 15 A. No.
 16 Q. Did you review its terms in
 17 those seven days?
 18 A. Yes.
 19 Q. And after reviewing and during
 20 that seven-day period you did not revoke
 21 this agreement?
 22 A. No.
 23 Q. Was there any questions that
 24 you directed to anybody about the
 25 agreement?

[Page 118]

1 J. Vaughn
 2 A. Yeah.
 3 Q. Who did you speak with?
 4 A. Steve Morelli.
 5 Q. When did you speak with Mr.
 6 Morelli regarding the settlement
 7 agreement?
 8 A. The day I came into his office
 9 and signed a release for the check.
 10 Q. So you met with Mr. Morelli
 11 and you signed the agreement in his
 12 office?
 13 A. Not the agreement I signed the
 14 release for the check. I had to sign a
 15 release for it. So I signed that in his
 16 office, the agreement was signed in the
 17 bathroom at Tavern on the Green.
 18 Q. How much time elapsed between
 19 the time you were in the bathroom and the
 20 time you signed the release?
 21 A. When you say the release, you
 22 are talking about the agreement or are you
 23 talking about the check?
 24 Q. You just said you signed the
 25 release. I'm asking you how much time

[Page 119]

1 J. Vaughn
 2 elapsed between the time you signed
 3 whatever you signed in the bathroom the
 4 agreement and the release?
 5 A. It had to be maybe a couple of
 6 weeks, maybe two weeks or something like
 7 that.
 8 Q. During that two-week period
 9 did you have any conversations with Mr.
 10 Morelli?
 11 A. When I went into his office
 12 and signed the release for the check, yes.
 13 Q. Other than that, did you have
 14 any other conversations with Mr. Morelli
 15 at any time regarding a settlement
 16 agreement?
 17 A. No.
 18 Q. Did you discuss the terms of
 19 the settlement agreement when you took the
 20 check?
 21 A. No.
 22 Q. Did you ask him about the
 23 arbitration provision?
 24 A. No.
 25 Q. Did you ask him about the

[Page 120]

1 J. Vaughn
 2 class actions?
 3 A. No.
 4 Q. Did you ask him whether or not
 5 I will be able to go to federal court
 6 after this and sue Prudential again?
 7 A. No, because I figured that he
 8 is my attorney, he would tell me that.
 9 Q. That you would be entitled --
 10 A. What my rights are at that
 11 point.
 12 Q. Did Mr. Morelli tell you you
 13 cannot go to federal court?
 14 A. No.
 15 Q. He never told you that?
 16 A. Never.
 17 Q. You read the agreement and it
 18 said that you were releasing all claims?
 19 A. Yes.
 20 Q. Did you ask him: What is this
 21 I'm releasing all my claims?
 22 A. No, I had no reason to ask him
 23 that
 24 Q. Because you understood that?
 25 A. Yes.

[Page 121]

[31] (Pages 118 to 121)

<p>1 J. Vaughn</p> <p>2 Q. You understood that you had to</p> <p>3 arbitrate any claim or controversy under</p> <p>4 the agreement?</p> <p>5 A. Yes.</p> <p>6 Q. When you went to see Mr.</p> <p>7 Morelli for the release of the check, did</p> <p>8 you hand him a written revocation saying I</p> <p>9 don't want to go forward with this</p> <p>10 agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you tell Mr. Morelli at</p> <p>13 that time I never agreed to arbitrate any</p> <p>14 claim or controversy after this?</p> <p>15 A. No.</p> <p>16 MS. LEWIS: I have nothing</p> <p>17 further.</p> <p>18 THE CHAIRMAN: Thank you.</p> <p>19 MR. BORTNICK: I have some</p> <p>20 questions.</p> <p>21 EXAMINATION BY</p> <p>22 MR. BORTNICK:</p> <p>23 Q. Mr. Vaughn, when you say that</p> <p>24 you signed a release in order to get the</p> <p>25 check, was that a release in the form of</p> <p style="text-align: right;">[Page 122]</p>	<p>1 J. Vaughn</p> <p>2 release, it was a statement saying these</p> <p>3 are the deductions from the \$200,000 and</p> <p>4 here is the Leeds & Morelli Brown check</p> <p>5 for the net?</p> <p>6 A. Correct.</p> <p>7 MR. BORTNICK: Nothing</p> <p>8 further.</p> <p>9 THE CHAIRMAN: Any recross.</p> <p>10 MR. HARPER: No.</p> <p>11 MS. LEWIS: Nothing further.</p> <p>12 ARBITRATOR LINDBERGH: I have</p> <p>13 a question. It is related to your</p> <p>14 statement.</p> <p>15 Mr. Vaughn, I'm looking for</p> <p>16 the date to be specific so that you</p> <p>17 can know it. It is Respondent's 2,</p> <p>18 Mr. Vaughn's statement. I wondered</p> <p>19 if you typed that yourself?</p> <p>20 THE WITNESS: No, I didn't.</p> <p>21 ARBITRATOR LINDBERGH: Do you</p> <p>22 recall who did type it?</p> <p>23 THE WITNESS: I submitted a</p> <p>24 statement which I have a copy of but</p> <p>25 this I think was done at Leeds &</p> <p style="text-align: right;">[Page 124]</p>
<p>1 J. Vaughn</p> <p>2 an agreement like I promise not to sue, or</p> <p>3 was it I give you the check and you are</p> <p>4 released, I'm acknowledging I'm getting a</p> <p>5 check?</p> <p>6 A. That was a statement with the</p> <p>7 deductions on it for DOW and for their</p> <p>8 fees and the amount of the check that was</p> <p>9 going to be given to me, that's what I</p> <p>10 signed that release for.</p> <p>11 Q. That was a check from Leeds &</p> <p>12 Morelli?</p> <p>13 A. Yes.</p> <p>14 Q. It was the \$200,000 settlement</p> <p>15 minus certain deductions?</p> <p>16 A. Yes.</p> <p>17 Q. And if I understood what you</p> <p>18 said, the release was just a document</p> <p>19 saying these are the deductions?</p> <p>20 A. Yes.</p> <p>21 MS. LEWIS: This is redirect.</p> <p>22 Why are you leading the witness like</p> <p>23 this?</p> <p>24 THE CHAIRMAN: Overruled.</p> <p>25 Q. The release when you call it a</p> <p style="text-align: right;">[Page 123]</p>	<p>1 J. Vaughn</p> <p>2 Morelli.</p> <p>3 ARBITRATOR LINDBERGH: Nothing</p> <p>4 further.</p> <p>5 THE CHAIRMAN: Mr. Vaughn,</p> <p>6 several times in the course of your</p> <p>7 testimony, for example, when you</p> <p>8 were talking about the Leeds Morelli</p> <p>9 retainer agreement --</p> <p>10 THE WITNESS: Yes.</p> <p>11 THE CHAIRMAN: -- you</p> <p>12 indicated that that wasn't really</p> <p>13 the full picture of what was</p> <p>14 transpiring between the two of you.</p> <p>15 Sometimes you called it a false</p> <p>16 statement or whatever.</p> <p>17 Could you elaborate on that as</p> <p>18 to what the full picture was as you</p> <p>19 saw it in this situation?</p> <p>20 THE WITNESS: Certainly.</p> <p>21 Again, when we signed this retainer</p> <p>22 or myself when I signed this</p> <p>23 retainer for Leeds & Morelli, we</p> <p>24 were or we had a bit of a group at</p> <p>25 that point. The group had or was</p> <p style="text-align: right;">[Page 125]</p>

[32] (Pages 122 to 125)

<p>1 J. Vaughn</p> <p>2 very much looking to take this</p> <p>3 public, this was not an issue of</p> <p>4 settling, this was strictly we</p> <p>5 wanted to go public with it and we</p> <p>6 wanted it to be -- and go to court.</p> <p>7 After talking with Leeds &</p> <p>8 Morelli, you know, they told to us</p> <p>9 do otherwise and we followed suit</p> <p>10 with that. However, as far as the</p> <p>11 agreement is concerned they, again,</p> <p>12 when I signed not the retainer --</p> <p>13 are we talking about specifically</p> <p>14 the retainer.</p> <p>15 THE CHAIRMAN: That is one</p> <p>16 place.</p> <p>17 THE WITNESS: The retainer --</p> <p>18 again, the retainer was signed</p> <p>19 somewhere after, and if I remember</p> <p>20 correctly, somewhere around the time</p> <p>21 that we had already been or where we</p> <p>22 had already dealt with Prudential</p> <p>23 and knowing what they wanted to do</p> <p>24 with the cases. And we ended up</p> <p>25 signing the retainer afterwards. I</p> <p style="text-align: right;">[Page 126]</p>	<p>1 J. Vaughn</p> <p>2 put into this, but yes these are the</p> <p>3 things you will get as part of your</p> <p>4 settlement.</p> <p>5 So that's why when you asked</p> <p>6 questions about that I was a little</p> <p>7 reluctant because I know of a</p> <p>8 different story.</p> <p>9 THE CHAIRMAN: One other</p> <p>10 question. A little clarification</p> <p>11 about the relationship between the</p> <p>12 21 days that the agreement says that</p> <p>13 you had to consider the release and</p> <p>14 the signature in the bathroom; how</p> <p>15 did those two -- what was the time?</p> <p>16 THE WITNESS: For the</p> <p>17 signature --</p> <p>18 THE CHAIRMAN: You said you</p> <p>19 signed it in the bathroom.</p> <p>20 THE WITNESS: It was about two</p> <p>21 weeks afterwards, Steve called me to</p> <p>22 come down to his office in Carle</p> <p>23 Place, Long Island to pick up my</p> <p>24 check and that was two weeks after I</p> <p>25 signed this in the bathroom at</p> <p style="text-align: right;">[Page 128]</p>
<p>1 J. Vaughn</p> <p>2 know we did not all of us sign it up</p> <p>3 front, the retainers.</p> <p>4 As far as the settlement</p> <p>5 agreement is concerned, again, and I</p> <p>6 specifically said it over Prudential</p> <p>7 phones which were recorded at the</p> <p>8 time: Look, you guys are telling me</p> <p>9 that I'm going to be working for</p> <p>10 DOW, I'm going to get \$200,000 that</p> <p>11 is not taxable and I'm going to get</p> <p>12 long-term disability.</p> <p>13 The three people who were on</p> <p>14 the phone was Jeff Brown, Steve</p> <p>15 Morelli and Lenny Leeds, and all of</p> <p>16 them agreed that's what was going to</p> <p>17 happen.</p> <p>18 Now when I saw this in the</p> <p>19 bathroom at Tavern on the Green, I</p> <p>20 specifically asked Jeff, who was the</p> <p>21 one who presented it to me: Jeff,</p> <p>22 what about the long-term disability</p> <p>23 what about the job for DOW. That</p> <p>24 could not be put into this -- in his</p> <p>25 words, that could not actually be</p> <p style="text-align: right;">[Page 127]</p>	<p>1 J. Vaughn</p> <p>2 Tavern on the Green.</p> <p>3 ARBITRATOR LUBOW: Thank you.</p> <p>4 Had you not been afforded at</p> <p>5 least 21 days prior to signing it?</p> <p>6 In other words, you weren't given</p> <p>7 this 21 days before you signed it?</p> <p>8 THE WITNESS: No, not at all.</p> <p>9 I signed it the same day it was</p> <p>10 presented to me.</p> <p>11 THE CHAIRMAN: And had you</p> <p>12 been presented with the substance of</p> <p>13 this?</p> <p>14 THE WITNESS: Other than what</p> <p>15 I've just spoke about what the terms</p> <p>16 were of my settlement nothing per se</p> <p>17 in writing.</p> <p>18 THE CHAIRMAN: And how long</p> <p>19 before had that been presented to</p> <p>20 you?</p> <p>21 THE WITNESS: It would have to</p> <p>22 have been like I say maybe a week or</p> <p>23 so before. It was whenever that</p> <p>24 fundraiser for Carl McCall went on,</p> <p>25 that's when they informed me</p> <p style="text-align: right;">[Page 129]</p>

1 J. Vaughn	1 J. Vaughn
2 basically and the day I left	2 but, he does have seven days to
3 Prudential for the day that was the	3 revoke it in writing and the
4 day they told me if you don't want	4 agreement, I think, specifically
5 to come back you don't have to come	5 provides that we don't cut the check
6 back, this is what you are getting.	6 until the seven days passes.
7 Later on I met them at Tavern on the	7 THE CHAIRMAN: Fine.
8 Green, where I first saw this	8 MR. HARPER: I don't think
9 agreement and signed it there at	9 there is a controversy between the
10 Tavern on the Green. And even then	10 parties that those time periods were
11 they went on to say, hey, this is	11 within the claimants' rights to
12 what you are getting. This is,	12 uphold or disregard.
13 there are certain things that aren't	13 THE CHAIRMAN: Fine.
14 in here, that is for whatever	14 MR. HARPER: I have nothing
15 obvious reasons but you will get	15 further.
16 those things. And, again,	16 MR. BORTNICK: Mr. Vaughn is
17 documentation, I have to prove that	17 our only witness we have nothing
18 they did try to go after those	18 more to press, we rest.
19 things.	19 THE CHAIRMAN: Do you have
20 THE CHAIRMAN: And you knew	20 any witnesses?
21 you had seven days to back out of	21 MR. HARPER: Prudential
22 this?	22 rests?
23 THE WITNESS: Yes.	23 THE CHAIRMAN: Do you have
24 THE CHAIRMAN: You didn't	24 any witnesses, Ms. Lewis?
25 consult -- did you consult another	25 MS. LEWIS: We rest.
[Page 130]	[Page 132]
1 J. Vaughn	1 J. Vaughn
2 lawyer to review this?	2 MR. HARPER: Can I make a
3 THE WITNESS: No.	3 suggestion while we have burdened
4 THE CHAIRMAN: Thank you very	4 you with a great deal, I would like
5 much.	5 to read the transcript and submit a
6 MR. BORTNICK: Nothing	6 very, very short piece of paper.
7 further.	7 I don't think we need, I would
8 MR. HARPER: Nothing further	8 just be repeating whatever I said in
9 order.	9 terms of the closing, and if I have
10 MR. BORTNICK: I think Mr.	10 a transcript I might think it might
11 Harper is about to say there is not	11 inspire me but I'm not talking
12 an issue as as to whether the	12 anything voluminous. Ten pages
13 release was valid because he wasn't	13 tops.
14 afforded 21 days. We are not making	14 MR. BORTNICK: I think, Mr.
15 the claim he was short changed in	15 Harper, I appreciate what he is
16 the time. It means they have to	16 trying to say. I think we have the
17 hold the agreement open for 21 days	17 right for closing statements I
18 and he can sign it within half a	18 believe under the rules.
19 second of receiving it, that's	19 THE CHAIRMAN: Sure.
20 actually a DEA waiver.	20 MR. BORTNICK: I would like
21 MR. HARPER: And it has	21 to use my right.
22 nothing to do with the time of the	22 THE CHAIRMAN: You say you
23 execution, as Mr. Bortnick says he	23 want to file a posthearing brief?
24 can sign it immediately or he can	24 MR. HARPER: Yes.
25 decide to take the full 21 days, and	25 MR. BORTNICK: So we can
[Page 131]	[Page 133]

[34] (Pages 130 to 133)

1 J. Vaughn
2 argue after the closing about that?
3 THE CHAIRMAN: Yes. One
4 doesn't exclude the other.
5 MR. BORTNICK: I think I may
6 have misunderstood him. I intend to
7 burden you a little.
8 MR. HARPER: I know the rules
9 say it, but I was hoping to forebear
10 from the closing statement.
11 MR. BORTNICK: You need not
12 to.
13 THE CHAIRMAN: Proceed.
14 MR. BORTNICK: Rule 10301-D,
15 subsection 3 of the NASD rules. No
16 member or associated person -- we
17 are talking about Prudential here --
18 shall seek to enforce any agreement
19 to arbitrate against a customer,
20 other member or person associated
21 with the member who has initiated in
22 court a punitive class action --
23 that would be Mr. Vaughn -- or is a
24 member of a punitive or certified
25 class, with respect to any claims
[Page 134]

1 J. Vaughn
2 encompassed by the class action
3 unless and until -- and there's a
4 four separate things set out. For
5 example, unless and until the court
6 decides not to certify the class or
7 one of the class members opt out,
8 for example. But the point of the
9 rule is clear, Prudential under rule
10 10301-D3 is not even allowed to be
11 doing what it is doing here, and
12 that's why a statement of claim we
13 have specifically sought the relief
14 of a disciplinary referral against
15 Prudential because it is a direct
16 violation of this rule what they are
17 doing here, that's number one.
18 Number 2, this panel has had
19 way too much paper on why we are
20 here, and that's why I wanted today
21 read into the record what Judge
22 Coate said. She wanted to know --
23 she wanted the arbitrators to
24 decide, not her, because we had
25 initially argued she should decide
[Page 135]

1 J. Vaughn
2 and she said, no, it is for the
3 arbitrators to decide what was the
4 intention of the parties when the
5 agreement was signed. Specifically,
6 what was the intention with respect
7 to class actions.
8 She came up with three things
9 that she thought might be possible.
10 And one of them no one is arguing.
11 No one is arguing that it was the
12 intent of the parties to have class
13 arbitration, so we are left with
14 two, two possibilities. Okay.
15 So we want to know what the
16 intent of the agreement is. That's
17 easy, we swear, we put under oath
18 and ask the people that signed the
19 agreement, the people that entered
20 into the agreement, Mr. Vaughn and,
21 well, I thought Prudential.
22 Obviously, Leeds & Morelli
23 can't do it. The only thing they
24 possibly could have done, and I
25 thought they might be doing because
[Page 136]

1 J. Vaughn
2 Mr. Brown was on the witness list
3 because maybe he was going to show
4 up and said I advised Mr. Vaughn
5 that so forth and so on, but he
6 didn't say that, he wasn't here to
7 say that.
8 The only testimony you had is
9 Mr. Vaughn's testimony, and he
10 clearly said I didn't intend to
11 waive a class action. I did not
12 intend to make some kind of waiver
13 with conflict with the other part of
14 rule 10301 which has no class
15 actions at the NASD.
16 I was frankly shocked that
17 Prudential, at least at first I was
18 shocked that Prudential did not put
19 any witnesses on their witness list
20 and did not have anybody appear to
21 say what Prudential's intent was,
22 because then you would have a "he
23 said, she said." Mr. Vaughn says
24 one thing and Prudential would say
25 the other, and the panel would have
[Page 137]

[35] (Pages 134 to 137)

1 J. Vaughn	1 J. Vaughn
2 to figure it out.	2 MR. HARPER: Yes.
3 We can only speculate, but	3 MR. HARPER: Mr. Bortnick,
4 perhaps the best reason, the one	4 consistently overlooks Rule 10216-F
5 that makes the most sense is that	5 of the NASD rules which says, if a
6 nobody from Prudential showed up is	6 member or a current or former
7 because no one from Prudential was	7 associated person of a member files
8 going to come here and say something	8 in court of the claim against a
9 that wasn't true. But it really	9 member or current or former
10 doesn't matter the only testimony	10 associated person of a member that
11 you have is Mr. Vaughn, that is the	11 includes matters that are subject to
12 only thing that can be relied on as	12 mandatory arbitration, identified by
13 far as what were the intentions of	13 the rules of the association or by
14 the parties not what is the basis of	14 private agreement, the defendant
15 Mr. Vaughn's class action case, not	15 party may move to compel arbitration
16 whether he was happy with his	16 of the claims that are subject to
17 attorneys, not whether he thinks he	17 mandatory arbitration.
18 has to pay \$200,000 back to	18 Pursuant to that right and
19 Prudential to continue in court.	19 that rule we made a motion to compel
20 That is all just more than	20 that the United States federal
21 window dressing. It is the circus	21 district court granted in the face
22 around why we are here. And you	22 of precisely the argument Mr.
23 only heard testimony from one	23 Bortnick is making to you this
24 witness about intent and that's why	24 morning.
25 this case was sent here, and so	25 So the idea that we were in
[Page 138]	[Page 140]
1 J. Vaughn	1 J. Vaughn
2 really there is nothing left to do.	2 violation of this rule, and I note
3 I don't see how there could be any	3 that the rule on which Mr. Bortnick
4 finding that there was an intent to	4 relies 10301, does not refer to a
5 waive class action claims because	5 formerly associated person. They
6 you heard no competent evidence that	6 could have put that in the rule,
7 would support that.	7 they didn't, but they did put it in
8 So we are left here in the	8 the rule on your right to move to
9 situation where the panel really, at	9 compel.
10 least in my view, has no choice but	10 Now, I'm at something of a
11 to make a finding that the class	11 disability here because the lawyers
12 action can go forward and, frankly,	12 in the room know that in connection
13 that Prudential should be, at least	13 with a communication between Mr.
14 that the panel doesn't have the	14 Vaughn and his personally chosen
15 ability for a regulatory	15 lawyer the lawyer Prudential had
16 disciplinary -- not to actually	16 absolutely nothing to do with
17 impose the discipline, but it has	17 selecting for him. Prudential had
18 the panel to make the referral to	18 no right at all to communicate with
19 the appropriate district because it	19 Mr. Vaughn directly that's an
20 is a clear violation of the rule in	20 ethical road in the Code of
21 trying to enforce a no class action	21 Professional Responsibilities in New
22 clause that they are not allowed to.	22 York and in every model Rule of
23 MR. BORTNICK: Thank you.	23 Professional Conduct in the 50
24 THE CHAIRMAN: Anything	24 jurisdictions.
25 further?	25 So Prudential is uniquely
[Page 139]	[Page 141]

[36] (Pages 138 to 141)

1 J. Vaughn
2 disabled from having any knowledge
3 of what was said between Mr. Vaughn
4 and his lawyers that was subject to
5 a privilege at the time. And one
6 that would have sent us to ethics
7 jail had we attempted to try and
8 communicate with Mr. Vaughn about
9 the meaning of the agreement that
10 was for his handpicked lawyer to do,
11 and it is deeply unfair for Mr.
12 Vaughn to come in here and say he
13 has a right to sue me because his
14 handpicked lawyer he claims he
15 didn't understand the agreement that
16 between PSI and his lawyer because
17 his lawyer didn't explain it to him.
18 Now, Mr. Bortnick says Prudential
19 has no witness on intent and the
20 reason we have no witness on intent
21 is because Prudential expressed its
22 intent in plain, clear, unambiguous
23 language in the agreement and for
24 Mr. Bortnick to suggest that the
25 only evidence before you is Mr.

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1 J. Vaughn
2 Vaughn's ever changing ever shifting
3 testimony about what he understood
4 and didn't understand what was true
5 and what wasn't true is the only
6 evidence before you is quite untrue.
7 Of course, you have before you
8 the agreements that he signed that
9 very clear and unambiguous language
10 in them. Equally clear and
11 unambiguous is the transcript of
12 Judge Coate in response again to
13 exactly the arguments exactly the
14 arguments that Mr. Bortnick is
15 making to you, quote, the plaintiff
16 clearly agreed to the arbitration of
17 his claims.

18 And I ruled that the
19 arbitration agreement was valid and
20 enforceable and that legally was not
21 in dispute, and that what this panel
22 was to decide was what kind of
23 arbitration proceedings we would
24 have, what kind of arbitration
25 proceedings we would have, is what

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1 J. Vaughn
2 the judge says in her transcript.
3 So I think it is pretty clear
4 when you sign on to a arbitration
5 clause with an individual claim,
6 remember all he had was a individual
7 claim, not a class claim. He had an
8 individual claim that he was
9 discriminated against. And he said
10 he wanted to be paid \$200,000, and
11 he was by PSI in a mediation
12 process.

13 The system worked. The law
14 favors these kind of alternative
15 dispute resolution mechanisms. And
16 in Mr. Vaughn's case, it worked very
17 handsomely for him. And it would be
18 I think an unmitakeable inference
19 arising from the clear and
20 unambiguous language of the contract
21 that when a person settles an
22 individual claim and agrees to
23 arbitrate any dispute over the
24 settlement agreement. For example,
25 if he doesn't get his Cobra, which I

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1 J. Vaughn
2 happen to believe not to be true,
3 but I don't have the document here
4 to demonstrate it as a statutory
5 segue, so it would be quite bizarre
6 for Cobra not to have worked in
7 those circumstances. It is
8 egregiously unfair for Prudential to
9 have to be confronted again by
10 someone it settled with and be paid
11 in a clear and unambiguous contract,
12 what is now almost nine years ago or
13 eight years ago, at some point it is
14 time to stop. Thank you.

15 THE CHAIRMAN: You are next.

16 MS. LEWIS: Let me start with
17 this, which is where we ended when
18 we were opening. Which is the
19 propriety of having Mr. Vaughn
20 testify at all.

21 And I think that Mr. Vaughn's
22 testimony was the quintessential
23 example of the wisdom of the law
24 that says when you have an agreement
25 the intent of the parties is the

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[37] (Pages 142 to 145)

<p>1 J. Vaughn</p> <p>2 objective intent, based upon the</p> <p>3 words in that agreement, and not the</p> <p>4 ability of the individuals to go</p> <p>5 back and try to remember what they</p> <p>6 did or did not intend eight years</p> <p>7 ago or nine years ago, whatever it</p> <p>8 is.</p> <p>9 Mr. Vaughn demonstrated that</p> <p>10 he understood certain parts and</p> <p>11 other parts maybe did not understand</p> <p>12 other parts, he didn't read some.</p> <p>13 Maybe he didn't read others very</p> <p>14 conveniently. And let us be honest,</p> <p>15 Mr. Vaughn, and his counsel will</p> <p>16 have to go back to federal court in</p> <p>17 order to seek his money, they have</p> <p>18 not sought any money here. They</p> <p>19 have conveniently turned the</p> <p>20 standard on its head, the court did</p> <p>21 not refer to this court or to the</p> <p>22 panel I mean the question of whether</p> <p>23 or not there was a knowing waiver of</p> <p>24 class actions. What was referred</p> <p>25 was a question of the interpretation</p> <p style="text-align: right;">[Page 146]</p>	<p>1 J. Vaughn</p> <p>2 arbitrated, can be brought back to</p> <p>3 court, notwithstanding that</p> <p>4 unambiguous clause because he has</p> <p>5 chosen to designate himself as the</p> <p>6 head of a class, when based upon an</p> <p>7 individually negotiated settlement</p> <p>8 puts this in a particularly unique</p> <p>9 position.</p> <p>10 Now in preparing for this</p> <p>11 hearing I actually went onto the</p> <p>12 NASD website, and the NASD website</p> <p>13 has a section that talks about we</p> <p>14 are not just looking to help the</p> <p>15 industry and the customers and the</p> <p>16 securities, we can offer dispute</p> <p>17 resolution to the commercial world</p> <p>18 and delve into individual questions</p> <p>19 and individual issues.</p> <p>20 This is not a customer claim,</p> <p>21 this is not even an employment</p> <p>22 claim. This is a commercial</p> <p>23 contract, a settlement agreement.</p> <p>24 And in that settlement agreement,</p> <p>25 the parties unambiguously agreed</p> <p style="text-align: right;">[Page 148]</p>
<p>1 J. Vaughn</p> <p>2 of the arbitration clause. And the</p> <p>3 testimony to the extent that it was</p> <p>4 consistent at all, was consistent</p> <p>5 with Mr. Vaughn knew and understood</p> <p>6 that any claim or controversy</p> <p>7 arising in connection with the</p> <p>8 agreement or its interpretation was</p> <p>9 to be arbitrated.</p> <p>10 And whether or not or what the</p> <p>11 rules were, he didn't inquire, he</p> <p>12 didn't care, he wanted his \$200,000</p> <p>13 and he received his \$200,000. He</p> <p>14 had opportunities to ask questions,</p> <p>15 he had opportunities to revoke, he</p> <p>16 didn't, as he testified, he just</p> <p>17 didn't care. That subsequently in</p> <p>18 order to evade and, frankly,</p> <p>19 fundamentally attack the quality of</p> <p>20 the alternative dispute resolution</p> <p>21 process, Mr. Vaughn, and his counsel</p> <p>22 can put his name in front of a</p> <p>23 punitive class action and claim that</p> <p>24 his individual claims that the court</p> <p>25 has already determined must be</p> <p style="text-align: right;">[Page 147]</p>	<p>1 J. Vaughn</p> <p>2 they were going to submit any claim</p> <p>3 or dispute and Mr. Vaughn has</p> <p>4 testified that he understood that</p> <p>5 that should be the end of the</p> <p>6 question that that should be this</p> <p>7 body in respect for arbitration and</p> <p>8 the alternative dispute process</p> <p>9 should have the discretion to say,</p> <p>10 he understood the clause, he</p> <p>11 understood everything, and it says</p> <p>12 on its face any claim or</p> <p>13 controversy. And we will go no</p> <p>14 further than that because the rest</p> <p>15 was just the rules that were going</p> <p>16 to be applied in that proceeding.</p> <p>17 In other words, as Mr. Harper</p> <p>18 aptly quoted what the court said:</p> <p>19 What the arbitration is going to</p> <p>20 look like, not whether or not an</p> <p>21 arbitration was going to be</p> <p>22 conducted or not.</p> <p>23 I would ask again that Mr.</p> <p>24 Vaughn's testimony be stricken</p> <p>25 because it should not be relevant to</p> <p style="text-align: right;">[Page 149]</p>

[38] (Pages 146 to 149)

1	J. Vaughn	1	J. Vaughn
2	this conversation. And point out in	2	language and it is clear on its
3	response to Mr. Bortnick's comments	3	face, but instead to say: We knew
4	that is the reason why we didn't	4	what we were doing when we stuck
5	compound the error by putting any	5	this in the agreement. We drafted
6	witness on at this time.	6	the agreement and we put this clause
7	The last thing is I would be	7	in because we wanted to make sure
8	remiss if I didn't go back and	8	there would never be a class action.
9	remind about the individual	9	That is easy to do, but they didn't.
10	respondents, you heard no word of	10	I think we probably can guess
11	testimony or heard no word in	11	why. The same thing for the Leeds &
12	argument they do not belong here and	12	Morelli defense. You could have put
13	in due difference to the panel there	13	on Mr. Brown when he said: I told
14	has been no referral to	14	Mr. Vaughn that, but they didn't
15	jurisdictional issues nor could	15	and, of course, we know why it's
16	there be. Thank you.	16	because that conversation with Mr.
17	MR. BORTNICK: I have a very	17	Vaughn and Mr. Brown never took
18	brief rebuttal.	18	place; so, in fact, these parties
19	THE CHAIRMAN: Yes.	19	are uniquely qualified to defend.
20	MR. BORTNICK: Over and over	20	Thank you.
21	I hear from Prudential as well as	21	THE CHAIRMAN: Thank you.
22	the Leeds & Morelli firm the	22	First of all, we are complete here.
23	individual that this is clear and	23	If that was a request that his
24	unambiguous, the arbitration clause	24	testimony be stricken, it is denied.
25	is clear and unambiguous. If it was	25	And I have a couple of questions for
	[Page 150]		[Page 152]
1	J. Vaughn	1	J. Vaughn
2	so clear and unambiguous, we never	2	the lawyers which I hope will help
3	would have been here. The judge	3	us.
4	would have said: Off to arbitration	4	First of all, Mr. Bortnick, I
5	you go. Instead she said, the	5	apologize for mangling your name
6	arbitrators have to figure out what	6	before. Why isn't it appropriate to
7	it means, and I can think of, she	7	read the reference in the provision.
8	says at the top of page 4 of the	8	The reference to the NASD rules as
9	transcript at least three different	9	shorthand for no class actions.
10	things and maybe there are more. It	10	MR. BORTNICK: You mean in
11	was clearly ambiguous to her at	11	this context or generally speaking?
12	least.	12	THE CHAIRMAN: I don't think
13	And that's why she said, and I	13	it makes a difference.
14	quoted earlier, you need to figure	14	MR. BORTNICK: I'm sorry, I
15	out the arbitrator -- she said the	15	just don't understand the question.
16	arbitrator, but we are talking about	16	You mean in this particular case or
17	a panel here -- what are the party's	17	this context or other.
18	intentions, that is the word she	18	THE CHAIRMAN: I'm not sure
19	uses "intentions." We read that	19	there is any difference.
20	earlier.	20	MR. BORTNICK: There is in
21	And so Prudential is not	21	the sense there are class actions as
22	uniquely disabled, it is uniquely	22	the panel is aware that go on every
23	qualified to put on a defense here.	23	day against the securities industry.
24	Bring up the Prudential witness who	24	I mean there must be hundreds in
25	is not going to say I can read the	25	court right now, you know, that's an
	[Page 151]		[Page 153]

[39] (Pages 150 to 153)

<p>1 J. Vaughn</p> <p>2 everyday occurrence, all the 10B5</p> <p>3 cases, the tort reform, and so</p> <p>4 forth. Of course there are class</p> <p>5 actions that exist. And the rule is</p> <p>6 there because the NASD for the stock</p> <p>7 exchange are equipped as forums to</p> <p>8 handle the administration of a class</p> <p>9 action. They've decided there are</p> <p>10 certain kinds of cases they are not</p> <p>11 going to hear, class actions are one</p> <p>12 of them.</p> <p>13 It doesn't mean that I as a</p> <p>14 buyer, and I never bought World Com</p> <p>15 at least not to my knowledge I</p> <p>16 bought a mutual fund, but as a</p> <p>17 purchaser of World Com doesn't mean</p> <p>18 I've waived my rights to a class</p> <p>19 action against you know there were</p> <p>20 lawsuits against --</p> <p>21 THE CHAIRMAN: I don't think</p> <p>22 you understand me. There is a</p> <p>23 provision here it says: Here is</p> <p>24 what is going to happen if there is</p> <p>25 a dispute, we are going to go to</p> <p style="text-align: right;">[Page 154]</p>	<p>1 J. Vaughn</p> <p>2 bringing a class action against</p> <p>3 Merrill Lynch for wrong research or</p> <p>4 CSFP is a better example because</p> <p>5 those were the claims that were made</p> <p>6 by other firms not me. So everybody</p> <p>7 has the same agreement when you have</p> <p>8 a customer agreement in a customer</p> <p>9 case, I agree to -- if I have a</p> <p>10 dispute with my broker, Merrill</p> <p>11 Lynch, I agree to arbitrate pursuant</p> <p>12 to the rules of the NASD but not for</p> <p>13 class actions, that's why the class</p> <p>14 actions exist.</p> <p>15 Moreover, it is a question of</p> <p>16 what is the intent of the actual</p> <p>17 people, what is the intent to them</p> <p>18 at the time they are signing it, the</p> <p>19 two parties to get down to the</p> <p>20 micro. And that's why I said</p> <p>21 Prudential should have had someone</p> <p>22 saying what they thought it meant.</p> <p>23 THE CHAIRMAN: Suppose the</p> <p>24 NASD has more onerous pleading</p> <p>25 rules -- just hypothetical -- than a</p> <p style="text-align: right;">[Page 156]</p>
<p>1 J. Vaughn</p> <p>2 arbitration under the rules of the</p> <p>3 NASD. And I'm wondering why it is</p> <p>4 not appropriate to read that phrase</p> <p>5 as "just as it means whatever the</p> <p>6 time periods are for pleading in the</p> <p>7 NASD as no class actions" it is a</p> <p>8 different way of saying it, in other</p> <p>9 words.</p> <p>10 MR. BORTNICK: I understand.</p> <p>11 First of all, because this is also</p> <p>12 the rule that firms aren't allowed</p> <p>13 to oppose a class action claim that</p> <p>14 I read to the panel. But the</p> <p>15 fundamental issue here is by</p> <p>16 agreeing to arbitrate, pursuant to</p> <p>17 the rules of the NASD -- which is</p> <p>18 pretty near exactly what the</p> <p>19 agreement says -- the rules are</p> <p>20 clear, just like anyone else that is</p> <p>21 arbitrating, I agree to arbitrate</p> <p>22 pursuant to the rules of NASD if I</p> <p>23 buy a share of World Com from my</p> <p>24 broker at Merrill Lynch. It doesn't</p> <p>25 mean I have been prohibited from</p> <p style="text-align: right;">[Page 155]</p>	<p>1 J. Vaughn</p> <p>2 judicial process, has a shorter</p> <p>3 statute of limitations than the</p> <p>4 judicial process; how is that</p> <p>5 different from the case where the</p> <p>6 claimant says -- the claimant says I</p> <p>7 didn't mean to submit to those</p> <p>8 rules, those rules are tougher than</p> <p>9 the rules in the judicial process, I</p> <p>10 didn't mean to submit to those.</p> <p>11 MR. BORTNICK: Again,</p> <p>12 perhaps, I'm not understanding the</p> <p>13 question. He is agreeing to submit</p> <p>14 to rules that prohibit class actions</p> <p>15 from being heard in this forum, but</p> <p>16 permit them to go on in the courts.</p> <p>17 That's why I use the example of all</p> <p>18 security industry class action</p> <p>19 cases. To my knowledge nobody's</p> <p>20 ever argued to any NASD or New York</p> <p>21 stock exchange panel when MillBerg</p> <p>22 Weiss or Burnstein Lidowitz the mega</p> <p>23 class action firms bring a class</p> <p>24 action case against the securities</p> <p>25 industry like Prudential or similar</p> <p style="text-align: right;">[Page 157]</p>

[40] (Pages 154 to 157)

1 J. Vaughn	1 J. Vaughn
2 firms. No one has ever made the	2 accounts at --
3 argument, you have a customer	3 THE CHAIRMAN: I assume that
4 agreement that says you only -- that	4 is what you are saying?
5 says something different. But with	5 MR. BORTNICK: Yes.
6 respect to the issue of class	6 MR. HARPER: He actually
7 actions, this is the first time I	7 worked at Solomon Smith Barney.
8 ever heard the argument being made.	8 MR. BORTNICK: Yes, I'm
9 And the reason -- and I don't	9 sorry.
10 understand why it is being made	10 MR. HARPER: And they were
11 because the parties agreed to	11 arbitrated because my firm
12 arbitrate pursuant to rules. And	12 represented Solomon Smith Barney in
13 those rules mean class actions are	13 those arbitrations.
14 in court. And in fact certain	14 What I heard Mr. Bortnick say,
15 discriminations at the option of the	15 is that if he buys a share of stock
16 employee under most circumstances	16 he can't be a member of a 10B5 class
17 are also in the court by the way.	17 action. When I buy a share of stock
18 The U-4, which I know the	18 I don't sign an arbitration
19 panel is familiar with has standard	19 agreement. My understanding is that
20 form language that says the employee	20 I assume he was referring to a suit
21 agrees to bring all actions arising	21 against the broker.
22 out of that employment to	22 MR. BORTNICK: The customer
23 arbitration, but also in the rules	23 MR. HARPER: If it is a claim
24 but not in the U4 was a change some	24 of say an unauthorized trade or if
25 years ago to the NASD and the New	25 it is a claim that I was defrauded
[Page 158]	[Page 160]
1 J. Vaughn	1 J. Vaughn
2 York State Stock Exchange rules that	2 by Mr. Grubman's analyst reports
3 said: If you have a sex	3 into acquiring excessive World Com
4 discrimination lawsuit, race	4 stock, that's an arbitration.
5 discrimination lawsuit, you may	5 THE CHAIRMAN: And you are
6 choose to bring that in court. So	6 suggesting it's a possible class
7 it is the same thing here. Class	7 action?
8 actions, they can't be heard here.	8 MR. BORTNICK: There are class
9 THE CHAIRMAN: The first	9 actions and, in fact, now that you
10 question to Mr. Harper and Ms.	10 are saying it, it is a case I'm not
11 Lewis: Is this like the customer	11 involved in in my office -- there is
12 case he is referring to?	12 a class action or was a class action
13 MR. HARPER: No, because if I	13 against Solomon Smith Barney over
14 buy a share of World Com, and then	14 World Com stock because our two
15 sue the officers and directors of	15 firms have an issue as to whether
16 World Com in a class action, I	16 one of our clients opted out of the
17 haven't signed any arbitration.	17 suit because he wanted to go to
18 MR. BORTNICK: I'm saying,	18 arbitration or pursuing it in
19 for example, the World Com suit, as	19 arbitration, and there is a question
20 you understand it, that is one	20 of whether he opted out of the
21 example they sued a lot of	21 lawsuit and is allowed to go to
22 individuals but they also sued	22 arbitration.
23 Credit Suisse, First Boston, where I	23 And Mr. Harper was very
24 believe Mr. Jack Krupman worked for	24 careful, he did not say that a
25 bad research. You have brokerage	25 purchaser of a share of World Com
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[41] (Pages 158 to 161)

1 J. Vaughn	1 J. Vaughn
2 can't be a member of a class because	2 ultimately settled. So we don't know
3 again the broker -- what he said if	3 where it went. But the Second
4 it was an unauthorized trade or	4 Circuit felt that the southern
5 something like that in general, but	5 district judge who was hearing it
6 he knows that there are, I don't	6 was so in error for not considering
7 know, thousands of people that	7 the arbitration clauses that were
8 bought World Com that was part of	8 contained in these other private
9 the lawsuit and the ultimate	9 agreements that they were reversed
10 settlement of the World Com class	10 and sent it back for purposes of
11 action in which Solomon Smith Barney	11 determining whether what, if
12 was a defendant, those are real	12 anything, had to be arbitrated.
13 class actions in court.	13 Here we are in a different
14 THE CHAIRMAN: And were these	14 circumstance. We have not an
15 suits in which the arbitration	15 employment contract, not a
16 clause was raised as you can't sue	16 discrimination contract, not a
17 us?	17 securities contract. We have a
18 MR. BORTNICK: I'm sure it	18 commercial contract between two
19 was never raised, to tell you the	19 independently represented people
20 truth.	20 which resolved the dispute and it is
21 MS. LEWIS: If I may	21 from that the claim that we are
22 interject because there are cases	22 addressing is arising. And whether
23 there that are out there that we	23 or not as we have argued, Mr.
24 have cited to you that we discussed,	24 Vaughn's claim --
25 where that circumstance has been	25 THE CHAIRMAN: What is the
[Page 162]	[Page 164]
1 J. Vaughn	1 J. Vaughn
2 raised and there is a class action	2 difference you are referring to?
3 suit in addition with the securities	3 MS. LEWIS: Because Mr.
4 fraud litigation and related claims	4 Vaughn, as Mr. Harper was addressing
5 were made regarding individuals who	5 in cross-examination, made certain
6 would either have a contract for	6 promises an received payment for
7 services or professionals. And the	7 those promises. And one of the
8 court makes an analysis as to	8 promises made was: I will arbitrate
9 whether or not the claims fall	9 any claim or dispute and that is a
10 within the arbitration clause and	10 promise between two parties without
11 whether or not they are encompassed	11 regard to anybody else and the court
12 with the classic action.	12 has --
13 So what Mr. Bortnick has been	13 THE CHAIRMAN: How is that
14 dismissing as just so much legal	14 different from the customer
15 gobbledegook that we've put before	15 agreement?
16 the arbitrators is very relevant	16 MS. LEWIS: Because the
17 here. In fact, Mr. Bortnick cited	17 customer agreements, first of all,
18 several cases in regarding the	18 have certain statutory requirements,
19 foreign currency tax shelters, but I	19 and they have certain questions as
20 personally was involved in	20 to whether or not there is even true
21 representing lawyers. And the	21 arm's length transaction. And here
22 Second Circuit reverts to the denial	22 is your agreement take it or leave
23 of the motion to compel arbitration	23 it. But even those cases I pointed
24 in that case, and it was sent back	24 out, and refer the panel to the
25 to the district court and the case	25 Canon versus Gun Allen case. In
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[42] (Pages 162 to 165)

1	J. Vaughn	1	J. Vaughn
2	that case the court said, well, yes	2	fundamentally says that there was
3	it is a securities fraud claim but	3	something, that he called it a
4	vis-a-vis the professional it has a	4	secret in his testimony, between
5	contract, we are going to look at	5	Leeds & Morelli and Prudential
6	what should be arbitrated and we are	6	attorneys that he didn't know about
7	going to look at that first.	7	that affected the agreement. So he
8	Because if we settle an arbitration	8	brought a class action, and the
9	that is going to formulate what has	9	judge said, well, he could have
10	to be addressed, if anything has to	10	technically waived his right to
11	be addressed in class action.	11	bring a class action at all
12	Here, the court has determined	12	depending on what his intent or what
13	Mr. Vaughn's individual claim must	13	the intention of the parties were to
14	be arbitrated. So if we address	14	the agreement.
15	that or had we addressed that, had	15	And that's why I keep coming
16	it been brought in arbitration it	16	back to the intention of Jeffrey
17	might have formulated whether or not	17	Vaughn and the intention of
18	Mr. Vaughn's claim could ever be	18	Prudential. And you only had the
19	included in a class action if his	19	testimony on one because that's what
20	individual claim is identical to	20	if judge said. In the Gun Allen
21	what he would claim as a class	21	case the way they characterize it on
22	action.	22	page 10 of their I guess reply
23	THE CHAIRMAN: Proceed.	23	brief, is not a particularly
24	MR. BORTNICK: Yes. The Gun	24	remarkable point. You only, you
25	Allen case she refers to, and I'm	25	can't sweep into court things that
	[Page 166]		[Page 168]
1	J. Vaughn	1	J. Vaughn
2	not saying I agree with her	2	are not part of the class action,
3	characterization of it, but the way	3	that's unremarkable.
4	they characterized it in their	4	MR. HARPER: I have something
5	motion papers was that there was no	5	else.
6	arbitration for claims that were	6	THE CHAIRMAN: Yes.
7	encompassed by a pending class	7	MR. HARPER: I think there
8	action.	8	are lots of reasons why this panel
9	In other words, claims that	9	should hold Mr. Vaughn to his
10	are part of the class action go to	10	promise, but I think one of the
11	court and don't get arbitrated,	11	things that, Mr. Chairman, I think
12	that's what their characterization	12	you are going to, is what is going
13	of the Gun Allen case is.	13	on between this and the typical
14	The case that Mr. Vaughn	14	customer and/or the typical employee
15	brought, he is the one bringing the	15	claim.
16	class action claim so, of course,	16	And I think what Ms. Lewis has
17	the claim that he would otherwise	17	been trying to say is because it is
18	have, the so-called individual claim	18	neither, it is neither a customer
19	is the class action claim, there is	19	complaining about a trade nor is it
20	no difference and it's just to think	20	an employee complaining about racial
21	of it any other way is just not only	21	or sex discrimination or age
22	flat-out wrong, but it is	22	discrimination.
23	nonsensical.	23	It is an employee complaining
24	He has brought a claim, a	24	about an arm's length agreement that
25	class action claim in court that	25	exchanged consideration, and had a
	[Page 167]		[Page 169]

[43] (Pages 166 to 169)

1 J. Vaughn	1 J. Vaughn
2 dispute resolution clause that	2 the cases in New Jersey and the
3 happened to refer to the procedures	3 cases all across the country you
4 of the NASD, and which is shorthand	4 signed an agreement, you are
5 for no class action, which makes	5 dispositively presumed, irrefutably
6 perfect sense because there was no	6 presumed to have understood the
7 class action to begin with, it was a	7 terms and conditions of that
8 unique individualized claim that Mr.	8 contract.
9 Vaughn was settling.	9 And you cannot come in eight
10 And I can't emphasize enough,	10 years later and say: My lawyer
11 how I'm standing here eight years	11 didn't tell me this. And to say it
12 later having paid all the	12 to me, when I wasn't his lawyer and
13 consideration having lived up to my	13 when I had no right to communicate
14 part of the bargain in every respect	14 with him.
15 and I'm still arguing with somebody	15 This is not about knowing and
16 who hasn't worked for me in nine	16 voluntary waiver because that
17 years who settled with me nine years	17 concept applies only to substantive
18 ago or eight years ago, or whatever	18 rights, and the Supreme Court, every
19 it is, and I'm still expending	19 federal circuit, every federal
20 resources trying to uphold an	20 district court has held time and
21 agreement that has dust on it.	21 time again that to agree to an
22 And I would respectfully	22 alternate dispute resolution process
23 suggest that fairness occupies a	23 is not to forego a substantive right
24 place or ought to occupy a place at	24 because the courts have faith in
25 the table.	25 these processes to vindicate those
[Page 170]	[Page 172]
1 J. Vaughn	1 J. Vaughn
2 Mr. Bortnick can cite all the	2 rights.
3 rules he wants about the NASD, but	3 MR. BORTNICK: I want to
4 he can't address the simple facts	4 respond. It has been raised several
5 that the rules of the NASD	5 time here and and I want to address
6 specifically allowed me to go into	6 this fairness issue. I'm standing
7 court to compel arbitration against	7 here eight years later having to
8 a former employee. That is what the	8 defend.
9 rule says. The rule does not forbid	9 The flip answer to the other
10 me to make a motion to compel	10 side of that is the truth here at
11 arbitration against a former	11 least the claim in this case is if
12 employee.	12 we don't hold you to account for
13 Mr. Vaughn was a former	13 what you did eight years ago, you
14 employee when he signed the	14 get away with doing something really
15 agreement and when he got the check.	15 bad, and so that's why you are here.
16 And he was a former employee when he	16 THE CHAIRMAN: One at a time.
17 brought the class action. And so	17 We don't want to rehear the
18 the notion that we are here to	18 testimony.
19 decide about the intention of the	19 MR. BORTNICK: Mr. Vaughn
20 parties when the intention of the	20 said it came up in a question
21 parties is set out in a contract	21 several times during cross, what the
22 that Mr. Vaughn promised me he	22 case is about and what the class
23 understood and read at the time,	23 action complaint is about.
24 that the law presumes he understood	24 And so this whole idea of
25 and read. The cases in New York and	25 fairness, The fairness is not to let
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[44] (Pages 170 to 173)

1	J. Vaughn	1	J. Vaughn
2	an injustice be gone unaddressed.	2	30thank you very much.
3	And that's why the class action is	3	Thank you for your patience
4	here because this is just like any	4	and good spirit.
5	other class action, the amount --	5	
6	that is why it is a class action,	6	(Whereupon, at 1:30 P.M., the
7	the amount, Mr. Vaughn has been	7	arbitration was concluded.)
8	damaged either there's a legal	8	
9	theory it has to do with the amount	9	
10	of the -- I don't think we have to	10	
11	go there. It is not about the	11	
12	\$200,000, but the amount that he is	12	
13	damaged is so small that it	13	
14	doesn't --	14	
15	THE CHAIRMAN: We understand	15	
16	the purpose of class actions.	16	
17	MR. BORTNICK: Fine.	17	
18	THE CHAIRMAN: Will each of	18	
19	the parties state affirmatively	19	
20	whether you had a full and fair	20	
21	opportunity to be heard.	21	
22	MR. BORTNICK: Yes.	22	
23	MS. LEWIS: Yes.	23	
24	MR. HARPER: Yes,	24	
25	exhaustively, Mr. Chairman.	25	
	[Page 174]		[Page 176]
1	J. Vaughn	1	J. Vaughn
2	THE CHAIRMAN: We will take	2	I N D E X
3	that for a yes. The decision will	3	
4	be forwarded to the parties and/or	4	WITNESS EXAMINATION BY PAGE
5	their counsel in order to expedite	5	J.VAUGHN Mr. Bortnick 36, 121
6	the delivery of the panel's decision	6	Mr. Harper 54
7	to the parties, the panel may either	7	Ms. Lewis 108
8	execute a handwritten copy of the	8	E X H I B I T S
9	award or each arbitrator may execute	9	
10	a counterpart copy of the award.	10	EXHIBITS DESCRIPTION PAGE
11	And ASD is not responsible for the	11	1 Opinion and order of Judge
12	disposal of any documents left here.	12	Coate dated August 12, 2005 38
13	So if you want to retain secure	13	2 Transcript of the hearing in
14	control of them, you should take	14	front of Judge Coate dated
15	them with you when you leave.	15	September 5, 2006 38
16	The record will remain open	16	3 Settlement agreement between
17	until the panel arrives at a	17	Mr. Vaughn and Prudential
18	decision or the panel determines	18	Securities, dated October 1998 38
19	that it is closed. No party will	19	RESPONDENTS'
20	contact any member of the	20	1 Agreement 61
21	arbitration panel directly. All	21	2 Five-Page document 72
22	communications are to be directed to	22	
23	the staff person assigned to this	23	
24	case. We request that the parties	24	
25	leave the room at the same time.	25	
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[45] (Pages 174 to 177)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>CERTIFICATE</p> <p>STATE OF NEW YORK)) : ss. COUNTY OF NEW YORK)</p> <p>I, WILLIAM BYRNE, a Notary Public within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the proceedings taken on April 23, 2007.</p> <p>I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2007.</p> <p><u>WILLIAM BYRNE</u></p> <p>[Page 178]</p>	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JEFFREY S. VAUGHN, individually and on :
behalf of those class members similarly :
situated, :
:

Plaintiff, :
:

-v- :
:

LEEDS, MORELLI & BROWN, P.C., LEEDS, :
MORELLI & BROWN, L.L.P., LEEDS & :
MORELLI, LEEDS, MORELLI & BROWN, :
PRUDENTIAL SECURITIES, INC., PRUDENTIAL :
FINANCIAL, INC., LENARD LEEDS, STEVEN :
A. MORELLI, JEFFREY K. BROWN, and JOHN :
DOES, JAMES VAGNINI, FREDERIC DAVID :
OSTROVE, ROBERT JOHN VALLI, JR., :
DISCRIMINATION ON WALL STREET, INC. and :
DISCRIMINATION ON WALL STREET :
MANHATTAN, INC., and JOHN DOES, ESQS. :
1-10 and JANE DOES, ESQS., 1-10 a :
fictitious designation for presently :
and unknown licensed attorneys, :
professionals and/or unknown persons or :
entities, :
:

Defendants. :
:
-----X

04 Civ. 8391 (DLC)

OPINION AND ORDER

Appearances:

For the Plaintiff:

Blaine H. Bortnick
Jeffrey Liddle
Liddle & Robinson, L.L.P.
800 Third Avenue
New York, New York 10022

For Defendants Leeds, Morelli & Brown,
P.C., Leeds, Morelli & Brown, L.L.P.,
Leeds & Morelli, Leeds, Morelli &
Brown, Lenard Leeds, Steven A. Morelli,
Jeffrey K. Brown, James Vagnini,
Frederic David Ostrove, and Robert John
Valli, Jr.:

Daniel T. Hughes
Kevin L. Spagnoli
Litchfield Cavo LLP
420 Lexington Avenue, Suite 1750
New York, New York 10170

For Defendant Prudential Securities,
Inc. and Prudential Financial, Inc.:

Gerard E. Harper
Theodore V. Wells, Jr.
Beth S. Frank
Paul, Weiss, Rifkind, Wharton &
Garrison, LLP
1285 Avenue of the Americas
New York, New York 10019

DENISE COTE, District Judge:

The plaintiff, Jeffrey S. Vaughn ("Vaughn"), has brought this putative class action against his employer and the lawyers he retained to represent him in an employment discrimination dispute against his employer, alleging that the settlement agreement that resolved the dispute (the "Agreement") was a product of secret collusion between his employer and his lawyers. The defendants have moved to dismiss this action and to compel arbitration, relying on an arbitration provision in the Agreement. Vaughn contends that the arbitration provision does not control, because the arbitration rules provided for in the Agreement do not permit class actions, and his lawyers are not parties to the Agreement. For the following reasons, the motion to compel arbitration is granted and the case is stayed until the resolution of the arbitration proceedings.

BACKGROUND

The following facts are taken from Vaughn's amended complaint unless otherwise noted. In 1998, Vaughn retained lawyers from Leeds, Morelli & Brown, P.C. (collectively "Leeds Defendants"), to assert employment discrimination claims against his employer, Prudential Securities Incorporated, for which Prudential Financial Inc. is a successor in interest (collectively "Prudential Defendants"). Vaughn pursued these claims through alternative dispute resolution procedures including mediation. The dispute between Vaughn and the Prudential Defendants produced the Agreement dated October 27, 1998. The Agreement, which is incorporated by reference in the Complaint and on which Vaughn has relied in part in bringing this action, granted the Prudential Defendants a general release of claims in exchange for \$200,000.00. The Agreement also contains the following arbitration provision:

Any claim or controversy arising out of or related to this Agreement or the interpretation thereof will be settled by arbitration under the then prevailing constitution and rules of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc. Judgment based upon the decision of the arbitrators may be entered in any court having jurisdiction thereof. The governing law of this Agreement shall be the substantive and procedural law of the State of New York.

(Emphasis supplied.)

Vaughn alleges that the Leeds Defendants and Prudential Defendants had a "secret agreement" dated February 13, 1998 that was part of an employment discrimination dispute resolution system that the Leeds Defendants had established, and that would

enable the Prudential Defendants to cap damages paid to various plaintiffs and settle numerous claims with plaintiffs represented by the Leeds Defendants at one time with a lump sum payment while providing direct payment of attorney's fees to the Leeds Defendants. Vaughn claims that he only learned of the existence of the secret agreement in or about October 2004. He initiated this action on October 25, 2004, and filed an amended complaint ("Complaint") on March 15, 2005.

Vaughn has styled this action as a class action based on his allegation that hundreds of other Prudential employees with discrimination claims against the company were adversely affected by collusion between the Leeds Defendants and the Prudential Defendants based on this or other secret agreements. Vaughn asserts claims for common law fraud, conspiracy to defraud, aiding and abetting fraud, tortious interference with a contract, breach of fiduciary duty, breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of the Racketeer Influenced Corrupt Organization Act ("RICO").

The Prudential Defendants and the Leeds Defendants both have filed motions to dismiss or to compel arbitration. The Prudential Defendants contend that because the Agreement contains an arbitration provision, this matter should be referred to arbitration, and that this Court does not have subject matter jurisdiction because the only mechanism conferring federal question jurisdiction is the RICO claim, which the Prudential Defendants argue is time-barred and insufficiently pleaded. The Leeds Defendants advance similar arguments, and add, among other

things, that the arbitration clause equitably estops Vaughn from pursuing his claims in federal court notwithstanding the fact that the Leeds Defendants are not parties to the Agreement. Vaughn argues among other things that because the arbitration rules provided for in the Agreement do not permit class actions, and he has styled his claim as a class action, this matter should not be referred to arbitration.

DISCUSSION

1. The Prudential Defendants

The FAA was designed to "ensure judicial enforcement of privately made agreements to arbitrate." Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 219 (1985). The FAA represents "a strong federal policy favoring arbitration as an alternative means of dispute resolution." JLM Indus., Inc. v. Stolt-Nielsen SA, 387 F.3d 163, 171 (2d Cir. 2004) (citation omitted). Therefore, "under the FAA, 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.'" Id. (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983)). The FAA requires that a contract provision to arbitrate disputes arising out of the contract "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Under the FAA, unless parties have unambiguously provided

for an arbitrator to decide questions of arbitrability, it is for courts to decide whether the parties agreed to arbitrate. Contec Corp. v. Remote Solution Co., 398 F.3d 205, 208 (2d Cir. 2005).

A court deciding a motion to compel arbitration must resolve four issues: (1) whether the parties agreed to arbitrate; (2) the scope of the agreement to arbitrate; (3) if federal statutory claims are asserted, whether Congress intended those claims to be nonarbitrable; and (4) if some, but not all, of the claims are arbitrable, whether to stay the balance of the proceedings pending arbitration. JLM Indus., 387 F.3d at 169. In this case, the Prudential Defendants and Vaughn agree that all of Vaughn's claims are arbitrable and that Vaughn agreed to the arbitration provision. They merely dispute whether the scope of the arbitration provision includes claims styled as class actions.

In the absence of "clear and unmistakable evidence to the contrary" in an arbitration clause, only in limited circumstances will a court "assume that the parties intended courts, not arbitrators, to decide a particular arbitration-related matter."

Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452 (2003)

(citation omitted). "These limited instances typically involve matters of a kind that contracting parties would likely have expected a court to decide." Id. (citation omitted). "They include certain gateway matters, such as whether the parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy." Id. The question of whether arbitration clauses "forbid class arbitration . . . does not fall into this narrow

exception" because it involves "neither the validity of the arbitration clause nor its applicability to the underlying dispute between the parties." Id. Thus, in a case where an arbitration clause provided that the parties "agreed to submit to the arbitrator 'all disputes, claims, or controversies arising from or relating to this contract,'" the Supreme Court held that a dispute about whether the arbitration clause "forbids the use of class arbitration procedures . . . is a dispute 'relating to this contract.'" Id. at 451 (emphasis in original).¹ In such a case, it was apparent that the parties "agreed that an arbitrator, not a judge, would answer the relevant question." Id. at 452.

The arbitration clause in the Agreement contains "sweeping language concerning the scope of the questions committed to arbitration," id. at 453, as it commits to arbitration "any claim or controversy arising out of or related to this Agreement or the interpretation thereof." (Emphasis supplied.) Vaughn claims that because the arbitration clause states that the contemplated arbitration will use the "rules of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc.," and those rules do not permit class action arbitrations, the parties could not have intended that the class action he now brings would be arbitrated. This interpretation,

¹ In Bazzele, an issue was whether arbitration clause language providing that disputes "shall be resolved . . . by one arbitrator selected by us [Green Tree] with consent of you [Green Tree's customer]" forbade class action arbitrations because the "consent of you" language was arguably inconsistent with multiple claimants. Bazzele, 539 U.S. at 450.

however, contradicts the clear statement that the arbitration clause applies to "any" claim or controversy related to the Agreement. Even assuming that Vaughn is right, and the applicable arbitration rules do, indeed, forbid class action arbitrations under all circumstances, it would be plausible to interpret the arbitration clause to require all claims to be arbitrated and to disallow class actions with no further qualifications or caveats. Here, as in Bazzle, the question is "not whether the parties wanted a judge or an arbitrator to decide whether they agreed to arbitrate a matter," but rather "what kind of arbitration proceeding the parties agreed to." Bazzle, 539 U.S. at 452 (emphasis in original). This question "concerns contract interpretation and arbitration procedures," and is therefore "for the arbitrator, not the courts, to decide." Id. at 453. The Prudential Defendants' motion to compel arbitration is accordingly granted.²

2. The Leeds Defendants

The common law doctrine of estoppel may bind a nonsignatory to an arbitration agreement. JLM Indus., 387 F.3d at 177. See also Choctaw Generation Ltd. P'ship v. Am. Home Assurance Co.,

² The defendants argue that the Complaint fails to state a claim for a RICO violation, and therefore, there is no basis for federal subject matter jurisdiction. Because the Complaint has a RICO claim that on its face is "neither clearly immaterial and made solely for the purpose of obtaining jurisdiction nor wholly insubstantial and frivolous," Lyndonville Sav. Bank & Trust Co. v. Lussier, 211 F.3d 697, 701 (2d Cir. 2000), there is subject matter jurisdiction over this action as of now.

271 F.3d 403, 404, 406 (2d Cir. 2001); Thomson-CSF, S.A. v. Am. Arbitration Assoc., 64 F.3d 773, 776 (2d Cir. 1995); Camferdam v. Ernst & Young Int'l, Inc., No. 02 Civ. 10100 (BSJ), 2004 WL 307292, at *6 (S.D.N.Y. Feb. 13, 2004).

[U]nder principles of estoppel, a non-signatory to an arbitration agreement may compel a signatory to that agreement to arbitrate a dispute where a careful review of the relationship among the parties, the contracts they signed, and the issues that had arisen among them discloses that the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.

JLM Indus., 387 F.3d at 177 (citation omitted) (emphasis supplied). See also Denney v. BDO Seidman, L.L.P., 412 F.3d 58, 70 (2d Cir. 2005); Contec, 398 F.3d at 209; Choctaw, 271 F.3d at 406.

The Leeds Defendants argue that under this standard, they may compel Vaughn to arbitrate his claims against them, because he alleges a close relationship, in the form of a conspiracy, between both sets of defendants, and because the claims Vaughn raises against the Leeds Defendants are intertwined with the Agreement. Vaughn concedes that his claims against the Leeds Defendants are related to the Agreement, but argues that the relationship between the Leeds Defendants and the Prudential Defendants was not close enough to warrant estoppel in this case, because they did not have a relationship with each other independent of Vaughn's alleged conspiracy.

Vaughn's argument misconstrues the governing legal standard. The Second Circuit has held that a claim against an alleged co-conspirator may not "always be intertwined to a degree sufficient

to work an estoppel," and that "[t]he inquiry remains a fact-specific one." JLM Indus., 387 F.3d at 178 n.7 (emphasis supplied). Nonetheless, "[a]pplication of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Denney, 412 F.3d at 70 (quoting Gridson v. Creative Artists Agency, L.L.C., 210 F.3d 524, 527 (5th Cir. 2000)). In a putative class action where the plaintiff taxpayers accused an accounting firm and a bank, among others, of conspiring to lure them into participating in unlawful tax shelter schemes, and the plaintiffs had an arbitration agreement with the accounting firm but not the bank, the Second Circuit held:

Having alleged in this RICO action that the [nonsignatory bank] and [signatory accounting firm] defendants acted in concert to defraud plaintiffs, and that defendants' fraud arose in connection with [the accounting firm's] tax-strategy advice, plaintiffs cannot now escape the consequences of those allegations by arguing that the [bank] and [accounting firm] defendants lack the requisite close relationship, or that plaintiffs' claims against the [bank] defendants are not connected to [the bank's] relationship with the accounting firm].

Denney, 412 F.3d at 70 (citation omitted). Vaughn's basic premise that Second Circuit precedent requires that the defendants have a close relationship independent of the alleged conspiracy is consequently incorrect.³

³ To the extent that Vaughn cites district court opinions that predate Denney for the proposition that a close relationship independent of the alleged conspiracy is required for a "close relationship," this Court respectfully declines to follow them.

Vaughn contends that the Leeds Defendants had a complex scheme to settle employment discrimination claims en masse, and that this scheme involved capping liability for employers such as the Prudential Defendants in exchange for direct payment of attorney's fees by the employers. He alleges that his employment discrimination claim was swept up by this scheme because the Leeds Defendants had a comprehensive, secret agreement with the Prudential Defendants to process his claim, among others, and that this agreement adversely affected the settlement of his claim. These allegations of civil RICO conspiracy involve close cooperation and collusion between Vaughn's employer and his lawyers. This theory of liability has been described elsewhere as one that "can only succeed" if the plaintiff proves his "allegation that all Defendants conspired and acted together." Camferdam, 2004 WL 307292, at *7.⁴ Vaughn therefore alleges precisely the type of "substantially interdependent and concerted misconduct" that estops him from avoiding arbitration of his claims with the Leeds Defendants. Denney, 412 F.3d at 70

See In re Currency Conversion Fee Antitrust Litig., 361 F. Supp. 2d 237, 264 (S.D.N.Y. 2005); Orange Chicken, LLC v. Nambe Mills, Inc., No. 00 Civ. 4730 (AGS), 2000 WL 1858556, at *5 (S.D.N.Y. Dec. 19, 2000).

⁴ In Camferdam, where the district court required taxpayers who had arbitration agreements with an accounting firm, and who were suing the accounting firm and a nonsignatory law firm for conspiring to create unlawful tax shelters on the taxpayers' behalf, to arbitrate claims against the law firm, the court also noted that the complaint alleged a "close relationship" between the entities involved, because "[a] civil conspiracy is a kind of partnership, in which each member becomes the agent of the other." Camferdam, 2004 WL 307292, at *6 (citation omitted).

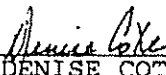
(citation omitted). The Leeds Defendants' motion to compel arbitration is therefore granted.

CONCLUSION

The defendants' motions to compel arbitration are granted. The case is stayed until the resolution of the arbitration proceedings and is transferred to the Court's suspense docket.

SO ORDERED:

Dated: New York, New York
August 12, 2005



DENISE COTE
United States District Judge

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order to show cause

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

JEFFREY S. VAUGHN,

Plaintiff,

v.

04 Civ. 8391 (DLC)

LEEDS, MORELLI & BROWN, P.C.,
et al.,

Defendants.

-----x

September 5, 2006
4:00 p.m.

Before:

HON. DENISE L. COTE,

District Judge

APPEARANCES

LIDDLE & ROBINSON, L.L.P.
Attorneys for Plaintiffs
BY: BLAINE H. BORTNICK

LITCHFIELD CAVO
Attorneys for Leeds, Morelli & Brown
BY: DANIEL HUGHES
KEVIN SPAGNOLI

PAUL WEISS RIFKIND WHARTON & GARRISON, L.L.P.
Attorneys for Defendant Prudential Securities &
Prudential Financial
BY: LIZA VELAZQUEZ
SAM SHELDEN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BY: DANIEL HUGHES
KEVIN SPAGNOLI

PAUL WEISS RIFKIND WHARTON & GARRISON, L.L.P.
Attorneys for Defendant Prudential Securities &
Prudential Financial
BY: LIZA VELAZQUEZ
SAM SHELDEN

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, for the plaintiff, are you
3 ready to proceed?

4 MR. BORTNICK: We are.

5 THE DEPUTY CLERK: Please state your name for the
6 record.

7 MR. BORTNICK: Blaine Bortnick of Liddle & Robinson.

8 THE DEPUTY CLERK: Who do you have with you at counsel
9 table?

10 MR. BORTNICK: I'm sorry. Rebecca Saenger. Your
11 Honor, Ms. Saenger is not admitted to this court. She is an
12 associate at our firm.

13 THE DEPUTY CLERK: For the defendant, please state
14 your name for the record and the party you represent.

15 MR. HUGHES: Daniel Hughes of the law firm Litchfield
16 Cavo, representing the Leeds Morelli & Brown defendants and
17 with me is Kevin Spagnoli, an associate with my law firm.

18 THE COURT: Thank you.

19 MS. VELAZQUEZ: Liza Velazquez of Paul, Weiss,
20 Rifkind, Wharton & Garrison for the Prudential defendants. And
21 with me is my colleague Sam Shelden.

22 THE COURT: Great. Welcome to everyone.

23 I was presented with an order to show cause and it
24 isn't my practice to sign them ex parte unless there is good
25 reason. Plaintiff's counsel were unavailable last week and so

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1 we put the matter over until today to give everybody an
2 opportunity to be heard.

3 This is a matter that was referred to arbitration
4 sometime ago now, and I thought it might be helpful for me to
5 give the parties a sense of where we stand. And after you hear
6 from me, if counsel want to be heard orally today on the
7 matter, fine. If you want to set a briefing schedule and put
8 this matter over for oral argument at a later date, fine.

9 But, I thought it might be helpful, as I said, to
10 begin with an overview statement from me.

11 In connection with this order to show cause I have
12 been given a set of documents. They include some of the
13 plaintiff's submissions to the New York Stock Exchange and the
14 NASD, including an October 28th 2005 letter to the New York
15 Stock Exchange, a February 2nd, 2006 statement of claim to the
16 NASD, and an August 15th, 2006 letter to the NASD. I think the
17 presentation of the legal issue in those letters is inaccurate
18 and misleading.

19 The plaintiff clearly agreed to the arbitration of his
20 claims and I ruled that the arbitration agreement was valid and
21 enforceable and that legally was not in dispute.

22 I referred this matter to arbitration so that the
23 arbitrator can decide what the intention of the parties was in
24 entering into that arbitration agreement, including deciding
25 what kind of arbitration proceeding the parties had agreed to.

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1 Now, the arbitrator, as I see it, could decide at
2 least three different things and there may be more but, for
3 instance, the arbitrator could decide that the parties had
4 intended to disallow class actions. The arbitrator could
5 decide that the parties had agreed to arbitrate individual
6 claims but had reserved unto themselves the right to litigate
7 class claims. The arbitrator could decide that the party had
8 agreed to arbitrate all claims, individual or class claims.

9 So, the parties disputed what the intention -- what
10 their intention was in entering into this arbitration agreement
11 and I want to refer to the Paul Weiss reply brief on the
12 underlying motions in which Paul Weiss argued, at page 3, that,
13 "It was for the arbitrator, not the Court, to interpret the
14 parties' intentions."

15 And of course Paul Weiss argued, and I expect it will
16 argue to the arbitrator, that, "When one reads the agreement
17 and when the arbitrator reads the agreement, the arbitrator
18 should conclude that the parties never intended to allow class
19 actions at all."

20 I didn't rule on that. I ruled that it is for the
21 arbitrator to interpret the agreement and decide what the
22 parties' intentions were.

23 Let's deal with a hypothetical. Let us say the
24 arbitrator decides that the arbitration clause and the parties'
25 intention in entering into the arbitration agreement disallows

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1 the plaintiff from bringing any class action lawsuit. That, of
2 course, would allow the plaintiff to continue through the
3 arbitration process with an individual claim. And, depending
4 on what arbitration decision came out of that process -- again,
5 I'm just talking about hypothetical -- somebody would move to
6 vacate or confirm the arbitration award.

7 In that context, in Federal Court here the parties
8 would have the ability, either before me or eventually on
9 appeal, and of course to the extent that the law permitted, to
10 raise issues concerning whether I had erred in sending the
11 matter to arbitration, whether the arbitrator had erred in
12 ruling that no class action litigation or arbitration was
13 permitted, and challenging the merits of the results of the
14 arbitration. Again, to the extent permitted by governing law.

15 Now, should Mr. Vaughn decide that he doesn't want to
16 submit an individual claim to the arbitration proceeding I
17 expect -- but I'm not going to rule on this -- that he can't
18 get a second bite at the apple -- and I see plaintiff's counsel
19 nodding in agreement -- that either forfeiture or waiver rules
20 or res judicata would apply. And that's it.

21 He had an opportunity to arbitrate the claim -- again,
22 we are playing with our hypothetical -- he didn't arbitrate it,
23 end of story.

24 That is, of course, if he were successful on appeal in
25 overturning my decision to send the dispute to arbitration or

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1 the arbitrator's ruling, he would be foreclosed.

2 But this, it seems to me, his decision to make. I
3 can't force him, and shouldn't, to make a particular claim to
4 the arbitrator but there may be consequences from that.

5 Now, I think, if I understand what's happening here,
6 Mr. Vaughn is not submitting his individual claim to the
7 arbitrator. I may not understand this correctly but if that's
8 what's happening, so be it.

9 But, I think I would be derelict not to make sure that
10 I mention the potential ethical issue here for plaintiff's
11 counsel. There may be a serious conflict of interest dividing
12 the plaintiff's interest from those of his counsel on this
13 particular point because if that's the strategy being pursued,
14 Mr. Vaughn may risk losing his right to have his claim ever
15 addressed and lose the right for all recovery.

16 So, I have this order to show cause. I'm happy to
17 hear the parties this afternoon. I'm happy to set a briefing
18 schedule. Or, I'm happy to say that you have my views, do
19 before the arbitrator what you will, and depending on what
20 happens, all in good time I may have some legal issues to
21 confront again.

22 Okay. Mr. Bortnick?

23 MR. BORTNICK: Yes, your Honor. I have to say I
24 largely agree with everything that your Honor said here.

25 The way that the claim was presented initially to the

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1 New York Stock Exchange before it rejected jurisdiction and
2 then subsequently to the NASD, was brought, only essentially it
3 was as a class in the sense that if there was -- if the
4 arbitration panel were to decide at some point in the future
5 that the arbitration clause means that class actions have been
6 waived, then there wouldn't be a one-on-one individual
7 arbitration. Mr. Vaughn was not intending to bring a
8 one-on-one individual arbitration.

9 The reason here is not a particular secret. I think
10 it was even presented to your Honor in papers on the motions
11 below or at a conference below. Mr. Vaughn, when he settled
12 his original case with Prudential with Leeds, Morelli
13 representing him, presented a piece of paper that said I think
14 these are my damages in a certain amount. And Prudential
15 agreed to pay that certain amount to Mr. Vaughn less, of
16 course, the contingency fee portion that went to Leeds, Morelli
17 and Brown.

18 The theory behind the class action of which Mr. Vaughn
19 was bringing was fully understanding but something different.

20 When you have a large group of people that are
21 settling and the allegation is that each of the settling
22 plaintiffs, the class members had a contingency fee taken from
23 their settlement and the allegation is unbeknownst to them,
24 Prudential was paying Leeds, Morelli and Brown quite a
25 substantial amount of legal fees unbeknownst to them, that that

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1 amounted essentially to a bribe and, under New York Law, the
2 class can recover the amount of that payment from, by
3 Prudential to Leeds, Morelli and Brown, because that is an
4 amount under New York Law that a party would have been willing
5 to pay to the plaintiffs in this case.

6 That was the theory of the class action.

7 Mr. Vaughn has always understood all along that in his
8 particular case on the one-on-one arbitration he recovered,
9 minus attorney's fees, what he was asking for. And that's not
10 the theory --

11 So, the theory of the class action was that there was
12 a secret payment made by Prudential to Leeds, Morelli and Brown
13 unbeknownst to Mr. Vaughn and the other potential class
14 plaintiffs and that is the amount of damages that were being
15 sought.

16 Now, it could be that the -- and if the arbitrators,
17 the arbitration panel, I think it would be a panel of three,
18 decide on the other hand that the arbitration clause which
19 says, Arbitrated pursuant to the rules of the New York Stock
20 Exchange or the NASD, which in this case have, for all intents
21 and purposes, I think it is the exact identical rule, no class
22 actions allowed, we don't hear class actions, you didn't waive
23 your class action claims, then we're automatically back in
24 court with the class action.

25 Now, I am certainly --

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1 THE COURT: But if I decide that you did waive your
2 class action claims --

3 MR. BORTNICK: Mr. Vaughn did not have any intention
4 to bring a one-on-one arbitration because he has a damages
5 issue here. And he understands that.

6 However, that being said, I think it is probably,
7 since your Honor has raised the concern -- to go and talk to
8 him one more time and say Mr. Vaughn -- because it is very easy
9 to amend the arbitration claim and just go back and say, well,
10 in the alternative, if the Court -- if the arbitration panel
11 decides class actions have been waived, therefore we bring an
12 individual one-on-one arbitration based on a fraud,
13 essentially, based on that secret agreement.

14 And so, I think it is probably appropriate to give
15 him, based on your Honor's concerns, that we should probably
16 ask him one more time if that's how he would want to proceed in
17 the alternative, recognizing that is the issue that he has had
18 and the decision he made before.

19 It is a very simple change to make in the arbitration
20 statement of claim. And we will go back and do that, but I do
21 think it is fair to point out, your Honor, that since last
22 December the defendants in this case, Prudential and Leeds,
23 Morelli and Brown, have known that the claim, as it is now
24 positioned in front of the NASD, is the claim we have been
25 bringing all along. And it is only last week where they're

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1 suddenly raising an objection to the way we've presented the
2 claim to now the NASD. But, they've known about this since
3 December when they obtained a copy of the New York Stock
4 Exchange statement of claim. They obtained a copy of the NASD
5 statement of claim, not what they were served -- they were
6 served on July 27 and I understand they got it on or about
7 August 1, but we certainly gave them a courtesy copy of it not
8 because we were required to, but because they felt we were --
9 they wanted us to and we agreed.

10 My records don't show whether we did it back in
11 February but we certainly did it in May.

12 So, we've known about this for a long time, so this
13 came as a surprise to us now that they're complaining about the
14 way we presented it.

15 And sort of today is the first day I could even
16 actually address it. I am more than happy to go back and talk
17 to Mr. Vaughn and iterate to him one more time: The Judge has
18 also raised this concern now and I think it is probably
19 appropriate that we do it.

20 And you understand, because I do agree with your
21 Honor, that if it is presented in the way it is presented and
22 there is no one-on-one arbitration claim, if Mr. Vaughn doesn't
23 amend the statement of claim -- and he could do it at a later
24 time, he doesn't have to do it now, he could do it within the
25 context of what has been presented to the NASD -- but, if he

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1 chooses not to proceed one on one, then I agree with your
2 Honor, he would not be able to come back and make some kind of
3 claim at a future date. He would lose it forever. I think
4 that is absolutely correct.

5 THE COURT: I don't think the formulation in the
6 papers that you have submitted to the New York Stock Exchange
7 or the NASD has been, in each instance, consistent with the
8 description of what I put on the record today. But, that is
9 for you and the defendants to litigate before the arbitrator.

10 MR. BORTNICK: The arbitrators have a copy of the
11 order, I believe. They should. No arbitration panel has been
12 appointed yet. The last letter you saw from us to the NASD,
13 there is a form letter that goes out from the NASD from the
14 processing center and it says here is a list of arbitrator
15 skills, customer complaints, this or that, and you can rank 1
16 through 4 and we will try to accommodate you.

17 And then we wrote back saying we don't think these fit
18 what we want. And we wrote George Friedman as the director of
19 arbitration because we didn't want a data inputter to look at
20 the letter and just toss it but we wanted to have some kind of
21 personal attention. We copied them on it because that's how we
22 see this claim.

23 The arbitration panel will have that order and they
24 can make a decision as to whether it should be allowed to be a
25 class action. And, in that case, they'll say take it back to

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1 Court.

2 But, I guess then because of what your Honor says, you
3 probably -- I guess I should probably request to let me go
4 ahead and have one more conversation with our client and tell
5 him what your Honor said. I think it is the right thing to do.

6 THE COURT: Do the defendants wish to be heard?

7 MR. HUGHES: Just briefly, your Honor. Daniel Hughes
8 on behalf of the Leeds defendants.

9 I received the papers from plaintiff's counsel and
10 their filings on August 1st of '06, the last date that
11 Mr. Bortnick stated.

12 The reason we are here is because the submission to
13 the NASD which is presently pending states: Accordingly,
14 Vaughn respectfully requests that the arbitrators issue an
15 order and decision declaring that the Vaughn may pursue his
16 class action claims against defendants in court and directing
17 defendants to withdraw their objections.

18 So, this, to us, did not seem to be an objective
19 presentation of your Honor's decision for the arbitrators to
20 decide what is the intent of the parties to arbitrate.

21 We are faced now with an August 15th deadline and I
22 was wondering if we could figure out a way to extend that
23 deadline for Mr. Bortnick to file additional papers and for us
24 to have an additional extension to respond to those papers.

25 THE COURT: I am not going to deal with arbitration

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1 scheduling issues.

2 Is there anything else?

3 MS. VELAZQUEZ: Your Honor, Liza Velazquez from Paul
4 Weiss for the Prudential defendants.

5 Your Honor, we have been here before you on these
6 issues three times now. I believe your Honor's August 12th,
7 2005 order was crystal clear: Vaughn must arbitrate his claims
8 against Prudential and submit to the arbitrators the question
9 of the format of how that arbitration should proceed.

10 He went to the NASD late last year. We weren't
11 provided with a copy of those papers at the time they were
12 presented to the NASD but we subsequently learned that --
13 excuse me. He went to the NYSE. We subsequently learned that
14 he asked the NYSE to overrule this Court's order that
15 notwithstanding the August 12th, 2005 order he can go ahead and
16 come back to court and basically do what the F.A.A. doesn't
17 permit him to do, which is to get an interlocutory appeal but
18 from an arbitral forum.

19 Then, your Honor, we were served with his NASD papers
20 on or about August 1st.

21 Respectfully, I would say to Mr. Bortnick that there
22 was no proceeding until we were served with those papers, so we
23 could not approach the Court about what had transpired until we
24 were served with the papers on August 1st.

25 Again, in our view, he is asking the NASD to overrule

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1 this Court and to send him back to court with his claims even
2 though the Court has already decided those claims are
3 arbitrable.

4 I submit that the three options that your Honor set
5 forth earlier today are, they're far afield from what
6 Mr. Bortnick and plaintiff are requesting from the NASD. He is
7 not submitting his claims against Prudential or any of these
8 parties to arbitration at all. Instead, he is rehashing what
9 has already been litigated before this Court and we
10 respectfully submit to your Honor that it would be unfair and
11 prejudicial to Prudential to have to relitigate those issues
12 again before the NASD.

13 THE COURT: Well, I don't think that the plaintiff's
14 papers, Mr. Vaughn's papers have correctly framed the issue for
15 the arbitrators, but I don't think defense counsel are either.

16 The issue that was in dispute and that I submitted to
17 arbitration was for an interpretation of the arbitration
18 agreement, and that was for the arbitrator to decide the
19 parties' intentions. I did not rule that everything had to be
20 subject to arbitration. I contemplated, therefore, that the
21 arbitrator, in deciding the parties' intentions, might decide
22 that the agreement to arbitrate does not foreclose the
23 plaintiff from coming to court and litigating a class action.

24 But the plaintiff is not, in its submissions to the
25 arbitrators to date, has not clearly stated the issue for the

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1 arbitrators to decide about the parties' intent and the scope
2 of that intent.

3 But, I think it would be wrong for the defendants to
4 characterize it the way you are today in court to suggest that
5 the arbitrators' hands are bound in some way such that they
6 couldn't rule in interpreting the parties' intent that the
7 plaintiff has the right to come to court and proceed on a class
8 action. And I refer you, again, to your reply brief on the
9 underlying motion practice.

10 So, I don't think there is a need for further argument
11 or briefing of this issue.

12 It seems to me that what I'm going to do -- we have a
13 court reporter here because this is complicated -- is that I'm
14 going to endorse the order to show cause to reflect that after
15 having heard from all parties, I decline to issue the order to
16 show cause without prejudice to any parties' rights to argue at
17 a later point in time that their rights have been infringed in
18 some way. And then we will just see how the arbitration
19 process plays itself out.

20 If a party misrepresents or misleads the arbitrator,
21 or doesn't ask for the appropriate relief, I don't know how
22 that will play out in court before me later but everybody's
23 rights are preserved. You can challenge whatever happens
24 through the arbitration process when it is ripe for such a
25 challenge.

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order to show cause

1 Not hearing any objection, I will so endorse the order
2 to show cause. If you want to wait afterwards, we can get you
3 a copy of that endorsement.

4 Since you are all here, I thought I would just address
5 the 54(B) motion that's pending before me too.

6 This motion is governed by the rule and Second Circuit
7 authority interpreting the rule. And I have looked most
8 recently at O'Bert, 331 F.3d at 40 to 41, a Second Circuit
9 2003, decision. It indicates, among other things, that where
10 the decision to direct the entry of a partial judgment in
11 advance of the final adjudication of all the claims must be
12 considered in light of the goal of judicial economy as served
13 by the historic federal policy against piecemeal appeals.

14 And, with this policy in mind, the power to enter a
15 partial judgment should be exercised sparingly, bearing in mind
16 that not all dismissals of individual claims should be
17 immediately appealed even if they are, in some sense, separable
18 from the remaining unresolved claims.

19 The power should generally be reserved for the
20 infrequent harsh case and certification should be granted only
21 if there exists some danger of hardship or injustice through
22 delay which would be alleviated by immediate appeal.

23 I'm going to deny the 54(B) motion.

24 First of all, there is no showing of error to suggest
25 to me that it, because of that, needs immediate review. The

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1 plaintiff is arbitrating the claims against the five dismissed
2 individual defendants. And the issues with respect to those
3 five dismissed individual defendants will be reviewed in the
4 ordinary course through the confirmation or vacating
5 proceedings that will follow the arbitration decision.

6 I haven't seen any showing of hardship or injustice
7 and I do not find, principally for the reasons pointed out by
8 defense counsel and their opposition, that judicial economy
9 would be served by a 54(B) finding at this point.

10 Thanks so much and good luck to all of you.

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EMPLOYMENT AND LABOR

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OCT 26 1998 14:43 FR PSI LAW DEPT.

212 214 1010 TO 315167475023

P.02/17

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Made and entered into this ____ day of October 1998, by and between Jeffrey Vaughn and Prudential Securities Incorporated ("PSI").

WHEREAS, Vaughn has alleged certain claims arising out of Vaughn's employment with PSI and separation therefrom; and

WHEREAS, PSI denies all such claims; and

WHEREAS, PSI and Vaughn have agreed to amicably resolve any and all such claims;

NOW, THEREFORE, in full and complete settlement of such claims and in consideration of the mutual promises and covenants set forth herein, Vaughn and PSI agree as follows:

1. Separation From Employment. Vaughn's last day of employment at PSI shall be October 23, 1998.

2. Payment by PSI. Upon the expiration of seven (7) days following Vaughn's execution of this Settlement Agreement and General Release (the "Agreement"), PSI shall pay to Vaughn, in a single lump-sum payment, the total agreed-upon amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00), as payment in full for all alleged personal injury or other non-wage claims, including, but not limited to, any claims for emotional distress and general, special and consequential damages. The parties acknowledge and agree that PSI shall file a form 1099-misc reflecting the above payment.

3. Medical Benefits. PSI agrees to continue Vaughn's health plan coverage through October 31, 1998. Thereafter, Vaughn will be eligible to continue the plan coverage pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). If Vaughn elects to continue health plan coverage pursuant to COBRA, PSI will pay Vaughn's COBRA premiums through and including April 30, 1999, or until Vaughn obtains other employment or is eligible for other group health plan coverage, whichever comes first. Thereafter, Vaughn will be responsible for the payment of any COBRA premiums through the remainder of Vaughn's eligibility.

4. Release by Vaughn. In consideration for PSI's commitment to the various arrangements described in the preceding paragraphs, and in lieu of any other benefits, as a full and final settlement, Vaughn hereby releases and discharges PSI, its parent, divisions, subsidiaries and affiliates and their current and former directors, officers, shareholders, agents and employees, and each of their predecessors, successors, and assigns (hereinafter "the Company"), from any and all claims and causes of action (except for the benefits specifically set forth in this Agreement) arising out of or related to Vaughn's employment or separation from employment, including, but not limited to, any claims for salary, bonuses, severance pay, vacation pay or any benefits under the Employee Retirement Income Security Act (except for vested benefits which are not affected by this Agreement), sexual harassment, or discrimination based on race, color, national origin, ancestry, religion, marital status, sex, sexual orientation, citizenship status, pregnancy, medical condition or disability (as defined by the Americans with Disabilities Act, or any other state or local law), age, or any other unlawful discrimination (under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act of 1990, Title VII of the Civil Rights Act, as amended, or any other federal, state, or local law), breach of implied or express contract, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, infliction of emotional distress, retaliation, whistleblower rights, violation of public policy or wrongful or constructive discharge, and for attorneys' fees, that Vaughn, his heirs, executors, administrators, successors, and assigns now have, ever had or may hereafter have, whether known or unknown, suspected

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212 214 1818 TO 915167475824

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Vaughn Settlement Agreement
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or unsuspected, up to and including the date of this Agreement. Vaughn further agrees, promises and covenants that, to the maximum extent permitted by law, neither he, nor any person, organization, or other entity acting on his behalf has or will file, charge, claim, allege, or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) against the Company involving any matter occurring in the past up to the date of this Agreement, or involving or based upon any claims, demands, causes of action, obligations, damages or liabilities which are the subject of this Agreement (other than an action to enforce the terms herein).

5. No Admission of Liability. Neither this Agreement, nor anything contained herein shall be construed as an admission by the Company that it has in any respect violated or abridged any Federal, State, or local law or any right or obligation that it may owe or may have owed to Vaughn. No final findings or final judgments have been made and Vaughn does not purport and will not claim to be a prevailing party, to any dispute or extent, nor will this Agreement or its terms be admissible in any proceeding other than in a proceeding for breach of the terms contained herein.

6. Cooperation by Vaughn. Vaughn agrees to cooperate with and make himself readily available to PSI or its General Counsel, as PSI may reasonably request, to assist it in any matter, including giving truthful testimony in any litigation or potential litigation, over which Vaughn may have knowledge, information or expertise.

7. Confidential and Proprietary Information of PSI. Vaughn understands and agrees that all books, records, documents and information, whether written or not, pertaining to PSI's business activities, are the confidential and proprietary property of PSI (hereinafter referred to as "trade secrets and confidential and proprietary information"). Vaughn warrants, covenants, and agrees that he will not disclose any of PSI's trade secrets and confidential and proprietary information to any person or entity not employed, owned by, or otherwise affiliated with PSI. Vaughn further agrees that he shall not be entitled to copies, in any form, of such trade secrets and confidential and proprietary information and that he shall immediately return to PSI any copies of such information currently in his possession.

8. Reemployment or Reinstatement. Vaughn agrees not to apply for employment or reemployment with PSI, and that PSI has no obligation, contractual or otherwise, to rehire, reemploy or recall him in the future.

9. Nondisparagement. Vaughn represents that he has not and agrees that he will not in any way disparage PSI, its current and former officers, directors and employees, or the Company, or make or solicit any comments, statements, or the like to the media or to others that may be considered to be derogatory or detrimental to the good name or business reputation of any of the aforementioned parties or entities.

10. Testimony Required by Law or Regulatory Authority. Vaughn further agrees that he will not at any time discuss any matter concerning PSI with anyone adverse or potentially adverse to PSI on any matter including employment claims or customer claims, without the prior written consent of Counsel for PSI. Nothing contained herein, however, shall preclude Vaughn from discussing any matter concerning PSI with any governmental regulatory or self-regulatory agency. Further, if required by a governmental regulatory agency or self-regulatory agency to provide testimony or information regarding the PSI, Vaughn will cooperate with said regulatory agency. If compelled to testify by a validly served subpoena in any legal proceeding or by regulatory authority, Vaughn will testify truthfully as to all matters concerning his employment at PSI.

11. Confidentiality of Agreement. Vaughn agrees not to disclose or cause to be disclosed, either directly or indirectly, to any person or organization, except to his legal and

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Vaughn Settlement Agreement
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financial advisor(s), or as required by law, or governmental regulatory or self-regulatory authority, any information regarding the amount of, terms of, or facts or circumstances underlying this Agreement.

12. Indemnification. Vaughn expressly warrants and represents to PSI that he will indemnify PSI against, and hold PSI harmless from, the tax consequences, if any, of PSI's not withholding taxes from, or reporting to the Internal Revenue Service as income, the aforementioned payment, including, but in no way limited to, any and all taxes, interest, and/or penalties incurred in connection therewith.

13. Entire Agreement and Severability. The parties hereto agree that this Agreement may not be modified, altered or changed except by a written agreement signed by the parties hereto. The parties acknowledge that this constitutes the entire agreement between them superseding all prior written and oral agreements. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect.

14. Arbitration. Any claim or controversy arising out of or related to this Agreement or the interpretation thereof will be settled by arbitration under the then prevailing constitution and rules of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc. Judgment based upon the decision of the arbitrators may be entered in any court having jurisdiction thereof. The governing law of this Agreement shall be the substantive and procedural law of the State of New York.

15. Breach of Agreement. Should Vaughn violate any provision of this Agreement, the Company may apply for appropriate relief. In any proceeding to enforce the terms of this Agreement, the Agreement may be introduced under seal in order to maintain its confidentiality. Vaughn understands and agrees that the damage to the Company due to any such breach will be extremely difficult to determine. Because of this difficulty, Vaughn agrees that in the event of a finding of such breach, he will forfeit to PSI all amounts received pursuant to this Agreement, and he shall indemnify PSI for any and all costs incurred in connection with any such recovery, including reasonable attorneys' fees. Notwithstanding any such relief, all of the other terms of this Agreement, including, without limitation, Vaughn's release of claims, shall remain in full force and effect. The remedies provided for in this provision shall not be construed to be exclusive and do not bar any other claims for relief.

16. Voluntary Execution. Vaughn acknowledges that he has carefully read this Agreement and understands all of its terms including the full and final release of claims set forth above. Vaughn further acknowledges that he has voluntarily entered into this Agreement; that he has not relied upon any representation or statement, written or oral, not set forth in this Agreement; that the only consideration for signing this Agreement is as set forth herein; that the consideration received for executing this Agreement is greater than that to which he may otherwise be entitled; and that this document gives him the opportunity and encourages him to have this Agreement reviewed by his attorney and tax advisor. Vaughn also acknowledges that he has been afforded at least twenty-one days to consider the release provision contained herein and that he has seven days after signing this Agreement to revoke it in writing. Accordingly, no payments required under this Agreement shall be made until the expiration of seven days following Vaughn's execution of the Agreement.

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212 214 1818 TO 915167475024

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IN WITNESS WHEREOF, the parties hereto evidence their agreement by their
signatures.

PRUDENTIAL SECURITIES INCORPORATED

Date:

BY: _____

Date:

10/27/98 Jeffrey Vaughn
JEFFREY VAUGHN

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LEEDS & MORELLI

Attorneys at Law

ONE OLD COUNTRY ROAD • SUITE 282 • CARLE PLACE, N.Y. 11514

TELEPHONE: (516) 873-9550

RETAINER

JEFFREY VAUGHN hereby retains the law firm of LEEDS & MORELLI, ESQS., to represent him with respect to his labor action against Prudential Securities.

1. This retainer will only include the contacting of the employer to seek a negotiated settlement. If legal action is required then the parties will discuss a different financial situation.

2. In the event of a settlement, JOSEPH DI STEFANO, hereby agrees that the proceeds thereof will be split one-third (1/3) to Leeds & Morelli, Esq., as attorneys, and two-thirds (2/3) to JEFFREY VAUGHN. No disbursements relating to the settlement of the matter will be deducted from the proceeds of the settlement. JEFFREY VAUGHN will receive two-thirds (2/3) of the total settlement figure, and Leeds & Morelli, Esqs. will receive the remaining one-third (1/3).

3. In the event this matter is not settled, JEFFREY VAUGHN is not responsible for any costs or disbursements incurred as a result of settlement efforts.

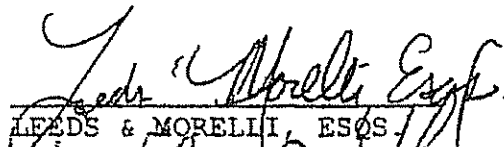
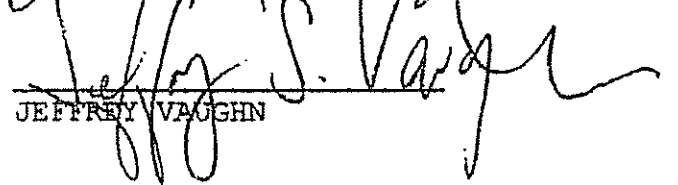
4. The client understands that he is retaining a law firm and that although the named partners will review and supervise all of the work product, associate attorneys and paralegal staff will also be involved in work, labor and services performed in the representation of client.

5. The parties hereto understand and acknowledge that no results can or will be guaranteed. The firm of LEEDS & MORELLI warrant that they will perform services in a professional manner and use their best efforts in that regard.

6. There are no other agreements between the parties other than those contained herein. This agreement represents the entire understanding of the parties.

7. All parties have read and understood each and every term herein and the signature below constitutes an acknowledgment of such understanding

Dated: January 5, 1998


LEEDS & MORELLI, ESQS.

JEFFREY VAUGHN

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Jeffrey S. Vaughn
355 Clinton ave. Apt 6D
Brooklyn N.Y. 11238

Jeffrey K. Brown
Leeds & Morelli
One Old Country road
Carle place N.Y. 11514
Suite 282

Mr. Brown I have worked at Prudential Securities for 13 years from February 1985 to present. My story is as follows:

- 1985 I started at Pru-Securities as a operations clerk trainee and full time employee. I worked under Anthony Carannante my salary 12,000 annually (starting receptionist made 15,000) I worked under a highly racist envioment, Mr. Carannante often made racial statements referring to blacks as bros or brothers, he also made racial statements about other ethnic groups calling them gooks, wetbacks, etc. He also said if your name does not end in a vowel you will not be promoted. At the time I was attending college for business mgt. In the evenings at interborough institute. Mr carannante made statements from time to time when he needed me stay and work late that "which is more important school or your job" eventually I was indirectly forced to dropout.
- 1986-1989 While working for tony I also worked partime for and with Rolf Roland the president of international arbitrage trading desk from the hours of 5:00 am till 9:30 am at which time I resume with my normal duties in equity operations I learned a lot from Mr. Roland as he was considered to be one of wall streets finest in currency trading. I receive twenty hours overtime and a car into work in the morning. I also began to train a number of new employees who began in operations and in no time they went on to become apart of the equity trading group. When I ask about going to the trading desk his response was " you can make a decent living in operations " Prudential has had in the thirteen years that I have worked for them one black male on the trading desk his name is Calvin Chambers. Calvin got on the trading desk through the mother company Prudential Insurance. Pru-Ins has a program that takes students from different universities and shows them the different arms of the pru and they pick a area to work. Calvin chose the equity trading desk. Within six months to a year Calvin file a report with human resources about one the head VP'S making racial slurs and statements to him, shortly Calvin left the firm and the VP went on to be the head trader at our Chicago office.
- 1990 to 1994 I began to apply for different positions on the trading desk, I spoke to Ronald Riddle the head of equity sales traders and ask for an interview for a spot on the retail trading his response was when the time comes I will call you I did not get an interview I also spoke with Marty Brophy the head trader of the equity desk and told him of my background and my experience he said I was very valuable to the firm but still I did not get an interview.

- 1994 we move to 1 N.Y. plaza the day before the whole dept. move I was ask to carry a computer hardrive to the new building because they needed it setup that night. While lifting the hardrive into a van I hurt my back , I immediately went to a specialist who diagnose me with a severe lumbosacral strain, I was told by my doctor that I needed immediate bed rest. This was Nov. 22 1994. When I told mgt. of my problem they totally disregarded it and said to me just live with it . Feb 2, 1995 my condition had got worst my doctor insisted that I stay in bed and therapy for at least three weeks. Again my request were ignored. Finally I went to employee relations and spoke to Ken Rotondo and he suggest that I take a medical leave of absence , so I did so. When I returned to work eight weeks later I not allowed to go to therapy for one and a half hours a day.
- 1995 to present I ask for an interview with Peter Kahn of pru's NYSE floor services I was recommended highly by sales traders and some mgt. Mike liotti started at pru and trained under me he was hired in 1995 with no prior experience and less than a year at the firm he was promoted to the same job that I interviewed for. Prudential has stonewall me from moving up in the company because of my color.

KEYS

- NO BLACK TRADERS ON THE EQUITY DESK THE OTC (OVER THE COUNTER) THE COVERTIBLE BOND DESK OR THE INTERNATIONAL DESK
- NO PROMOTIONS
- RACIST ENVIORMENT
- ONLY HIRE FROM OUTSIDE/ FRIENDS AND FAMILY FROM ACCTS. WE DO BUSINESS WITH.
- THEY HAVE PEOPLE INCLUDING VP'S ON THE TRADING DESK WITH NO COLLEGE EXPERIENCE.
- THEY HAD PEOPLE WORKING ON THE DESK BEFORE OR WITHOUT THEIR LICENCES

1990	salary	25,000			
	bonus	500			
1991	salary	27,500			
	bonus	750			
1992	salary	30,275			
	bonus	2500			
1993	salary	29,700			
	bonus	1125			
1994	salary	33200			
	bonus	1400			
1995	salary	29,100			
	bonus	2500			
1996	salary	31,266			
	bonus	4000			
1997	salary	35,700			
	bonus				
			back pay damages	estimated . 200,000	

I started at Prudential Securities in Feb. 1985 as a operations clerk trainee. My starting salary was 12,000 annually, I also were attending college at Interboro Institute for my A.S. in business mgt. From 1985 to 1997 I worked in capital markets operations and trade support for block trading desk. I also worked for the president of the International Arbitrage trading desk. I worked closely with Rolf Roland as his liaison and other duties such as monitoring foreign currency price fluctuations, enter orders /London trading desk and prepare daily reports from the hours of 5:00 am to 10:00am. With operation and trader asst. Experience I then began to inquire about positions on the equity trading desk. I was passed over by those who came in the firm after me and they were also given larger starting salaries and move to the equity trading desk with less qualifications than myself also within one to two years time.

FACTS:

- Their are no male black traders on the block desk, otc or convertible bond or international desk
- Their are people without college degrees on the desk.
- Their people hire on the desk without a Series 7 license
- Their are black employees with a license and are not trading

VIEWS

I truly have been a victim of racist incidents that are in violation of my civil rights I want to sue prudential on these grounds.

I want to go public with my story

If I settle with pru it is under these condition only:

- that I be compensated for damages mental, physical and emotional.
- I don't want to work for the pru any longer
- I want a letter of recommendation stating the position I am suppose to have
- policy changes / outside evaluation periodically